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EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 752

MAKING PUBLIC THE AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF INDONESIA ON IMMIGRATION

WHEREAS, an Agreement between the Republic of the Philippines and the Republic of Indonesia on Immigration was concluded and signed by their respective plenipotentiaries in Djarkarta on July 4, 1956;

WHEREAS, the Senate of the Philippines by its Resolution No. 94, adopted on May 23, 1957, concurred in the ratification of said Agreement in accordance with the Constitution of the Philippines;

WHEREAS, the said Agreement had been duly ratified by both parties and the instruments of ratification of the two Governments were exchanged in Manila on February 1, 1961;

WHEREAS, it is stipulated in the said Agreement that it shall enter into force upon the exchange of the instruments of ratification;

NOW, THEREFORE, be it known that I, Carlos P. Garcia, President of the Philippines, have caused the said Agreement, a certified copy of which is hereto attached, to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the Republic of the Philippines and the citizens thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 5th day of May, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

NATALIO P. CASTILLO
Executive Secretary

[Note: See *Historical Papers and Documents* for the complete text of the Agreement.]

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 348

AUTHORIZING THE INSURANCE COMPANY OF
COMMERCE AND INDUSTRY, INC., TO BECOME
A SURETY UPON OFFICIAL RECOGNIZANCES,
STIPULATIONS, BONDS, AND UNDERTAKINGS

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body, whether executive, legislative, or judicial, shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking unless such corporation has been authorized to do business in the Philippines in accordance with the provisions of said Act No. 536, as amended, nor unless such corporation has, by contract with the Government of the Philippines, been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, the INSURANCE COMPANY OF COMMERCE AND INDUSTRY, INC. is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended.

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me

by law, do hereby authorize the INSURANCE COMPANY OF COMMERCE AND INDUSTRY, INC., to become a surety upon official recognizances, stipulations, bonds, and undertakings in such manner and under such conditions as are provided by law, subject to the condition that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 2nd day of May, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA

President of the Philippines

By the President:

NATALIO P. CASTILLO

Executive Secretary

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Third Session

H. No. 1464

[REPUBLIC ACT No. 3001]

AN ACT GRANTING THE ALLIED BROADCASTING CENTER PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, the Allied Broadcasting Center is hereby granted a permit, which shall continue in force during the time that the Government has not established similar service at the places selected by the grantee, to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting stations in the Philippines: *Provided*, That the permit shall be void unless the construction of at least one radio broadcasting station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further*, That the grantee shall provide adequate public service time to enable the Government through the said radio broadcasting stations to reach the population on important public issues; shall assist on the function of public information and education; shall conform to the ethics of honest enterprise and shall not use its stations for the broadcasting of obscene or indecent language or speech, or for the dissemination of deliberately false information or wilfull misrepresentation or to the detriment of the public health or to incite, encourage or assist in subversion or treasonable acts.

SEC. 2. The grantee shall file a bond in the amount of twenty thousand pesos to guarantee for the full compliance and fulfillment of the conditions under which this permit is granted.

SEC. 3. In the event of any competing individual, partnership or corporation, receiving from Congress a similar permit in which there shall be any term or terms more favorable than those herein granted or, tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become part of the terms thereof, and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 4. The grantee, its successors or assigns, shall hold the national, provincial, city and municipal governments of the Republic of the Philippines harmless from all claims, accounts, demands or actions arising out of accidents or injuries, whether to property or persons,

caused by the construction or operation of its radio stations.

SEC. 5.(a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property exclusive of the permit, as other persons or corporations are now or hereafter maybe required by law to pay.

(b) The grantee shall further be liable to pay all other taxes as provided in the National Internal Revenue Code by reason of this permit.

SEC. 6. In the event the Government should desire to maintain and operate for itself any or all of the stations of the grantee, the latter shall turn over said station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 7. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril, emergency, calamity, disaster or disturbance of peace or order to cause the closing of said stations or to authorize the temporary use and operation thereof by any department of the government without compensating the grantee for the use of said stations during the period when they shall be so operated.

SEC. 8. The grantee shall not require any previous censorship of any speech, play, act or scene or other matters to be broadcast from its stations; but if any such speech, play, act or scene or other matters should constitute a violation of the law or infringement of private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matters: *Provided*, That the grantee, during any broadcast may cut off from the air the speech, play, act or scene or other matters being broadcast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

SEC. 9. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this permit nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose without the approval of the Congress of the Philippines first had. Any corporation to which this permit is sold, transferred, or assigned, shall be subject to all the conditions, terms, restrictions and limitations of this permit as fully and completely and to the same extent as if the permit has been originally granted to the same person, firm, company, corporation and other commercial or legal entity.

SEC. 10. The permit granted under this Act shall be subject to amendment, alterations or repeal by the Congress of the Philippines when the public interest so requires, and shall not be interpreted as an exclusive grant of the privilege herein provided for.

SEC. 11. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1891

[REPUBLIC ACT No. 3002]

AN ACT TO ESTABLISH, ORGANIZE AND MAINTAIN A REGIONAL NATIONAL SECONDARY SCHOOL OF ARTS AND TRADES IN THE MUNICIPALITY OF DIPOLOG, PROVINCE OF ZAMBOANGA DEL NORTE, TO BE KNOWN AS THE ZAMBOANGA DEL NORTE SCHOOL OF ARTS AND TRADES, AND TO AUTHORIZE THE APPROPRIATION OF FUNDS FOR THE PURPOSE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Secretary of Education is hereby authorized to establish, organize and maintain a regional national secondary school of arts and trades in the Municipality of Dipolog, Province of Zamboanga del Norte, to be known as the Zamboanga del Norte School of Arts and Trades.

SEC. 2. The sum of one hundred thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the establishment, operation and maintenance of the said school.

SEC. 3. The Secretary of Education is hereby empowered to locate and acquire or cause to be located and acquired a suitable site for the said school, which may be public or private land situated within the Municipality of Dipolog, Province of Zamboanga del Norte.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2872

[REPUBLIC ACT No. 3003]

AN ACT GRANTING RAFAEL CONSING A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF TAGO, PROVINCE OF SURIGAO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Act Numbered Thirty-one hundred and eight and its amendments, applicable thereto, there is hereby granted to Rafael Consing, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and power for sale within the limits of the Municipality of Tago, Province of Surigao, Philippines. The grantee shall further have the right and privilege to install, lay and maintain on all streets, public thoroughfares, bridges and public places within said limits, poles, conductors, interrupters, transformers, cables, wires, and other overhead appliances, and all other necessary apparatus and appur-

tenances for the furnishing and distribution of electric current and to supply, sell and furnish such current to any person, corporation or public or private concern within said limits for provincial, municipal, domestic or manufacturing uses and for any other use to which electricity may be put, and to charge and collect a schedule of prices and conventional sets for the use of the same: *Provided*, That this franchise shall not take effect until the grantee shall have obtained from the Public Service Commission a certificate showing the public necessity and convenience of the same, in accordance with the purpose of subsection (i) of Section fifteen of Act Numbered Thirty-one hundred and eight, as amended, and shall have filed such certificate with the Secretary of Public Works and Communications upon accepting this franchise: *And provided, further*, That if the grantee does not file the proper application for said certificate with the Public Service Commission within six months from the date of the approval of this Act, this franchise shall become null and void.

SEC. 2. The poles erected by the grantee shall be of such a height as to maintain the wires stretched on the same at a distance of at least twenty feet above the level of the ground, and shall be of such appearance as not to disfigure the streets, and shall be placed with due regard for the public safety so as not to be a danger to the same, in accordance with a plan approved by the provincial or municipal authorities concerned, represented by the provincial governor or the municipal mayor, as the case may be, and said grantee shall supply electric power, heat and light to any applicant for the same within fifteen days after the date of his application and as between such applicant and other applicants, in the order of the date of his application, up to the limit of the capacity of the plant of said grantee, to be determined by the electrical engineer of the Public Service Commission on the application of said grantee, and should the demand for electric power, heat and light at any time increase beyond the capacity of the plant of said grantee to supply the same, the capacity of said plant shall be increased by said grantee to meet such demand, in accordance with the decision of the Public Service Commission or its legal successors: *Provided, however*, That in case the point at which the electric light, heat, or power to be supplied is more than thirty meters from the lines or wires operated by said grantee, the latter shall not be obliged to furnish said service.

SEC. 3. All apparatus and appurtenances used by the grantee shall be modern and first class in every respect, and said wires shall be insulated and carefully connected and fastened so as not to come in direct contact with any object through which a ground could be formed, and shall

be stretched so as not to interfere with the free use of said streets and public thoroughfares nor cause any injury to the public, or danger of fire or damage and inconvenience to the owners of the property: *Provided*, That in the maintenance and operation of his plant and system for the transmission and distribution of electric current, the grantee shall always be subject to such reasonable regulations as the Municipal Council of Tago and the Provincial Board of Surigao may promulgate in the premises and also to the regulations prescribed by the National Electrical Code of America: *Provided* That the grantee shall, whenever the Congress of the Republic of the Philippines, upon recommendation of the Public Service Commission or its legal successors, so directs, place said wires in underground pipes or conduits at his own expense and without any cost and prejudice to the municipality above-mentioned.

SEC. 4. Whenever it shall be necessary in the erection of said poles to take up any portion of the sidewalks or dig up the ground of the public streets or thoroughfares, then the said grantee shall, after said poles are erected, without any delay replace said sidewalks in the proper manner or arrange said streets or public thoroughfares removing from the same all rubbish, dirt, refuse or other materials which may have been placed there, taken up or dug in the erection of said poles, leaving them in as good condition as they were before the work was done; and whenever it shall become necessary, by reason of the extension of streets or plazas as determined upon by the municipal council of the municipality above-mentioned to change the location of such poles, such change shall be made by the grantee, his successors or assigns, at their expense without delay, and said poles shall be placed where directed by said provincial board or said municipal council.

SEC. 5. Whenever any person has obtained permission to use any of the streets or public thoroughfares of the municipality above-mentioned for the purpose of removing any building or in the prosecution of any municipal work or for any just cause whatsoever, making it necessary to raise or remove any of said poles or electric wires which may obstruct the removal of said building so as to allow the free and unobstructed prosecution of said work, the person or entity at whose request the building has been moved or the construction undertaken, shall pay one-half of the actual cost of removing or raising and of replacing the poles, wires and other overhead or underground conductors. The notice shall be served in the usual form, and in case of refusal or failure of the grantee to comply with such notice, the municipal mayor, with the proper approval of the municipal council first had, shall order such poles or wires to be raised or removed at the expense of said

grantee, for the purpose aforesaid: *Provided, however,* That the grantee may appeal from any such decision to the Provincial Board of Surigao whose decision shall be final.

SEC. 6. The grantee shall be liable to the municipality above-named for any injury arising from any claims caused by accidents to person or property by reason of the construction under this franchise or of any neglect or omission to keep the said poles and wires in a safe condition.

SEC. 7. Said grantee shall file his written acceptance of this franchise with the Secretary of Public Works and Communications within one hundred and eighty days from the date when he obtained the certificate required by Section one of this Act and shall commence work under the supervision and subject to the approval of the electrical engineer of the Public Service Commission, in accordance with the plan, specifications, and estimates previously approved by the Public Service Commission, within six months' time from and after the date of filing such acceptance. unless prevented by an act of God, or *force majeure*, usurped or military power, martial law, riot or civil commotion or other inevitable cause, and shall complete the system and have the same in operation within eighteen months from the date of such acceptance, and shall thereafter maintain a first-class electric light, heat and power service: *Provided*, That in consideration of the franchise hereby granted, the grantee shall pay quarterly into the municipal treasury of the municipality above-named one and one-half *per centum* of the gross earnings of his electrical business during the life of this franchise. And said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial, city or national now or in the future, on its building, poles, wires, insulators, transformers, installations, conductors, and accessories, placed in and over and under all public or private property, streets bridges and public squares, and on his franchise, rights, privileges, receipts, revenues and profits for which taxes the grantee is hereby expressly exempted.

SEC. 8. Upon the acceptance of this franchise as provided in the preceding section, the grantee shall deposit in the National Treasury or with any of its agents in the Province of Surigao one thousand pesos or negotiable bonds of the Republic of the Philippines or other securities approved by the Secretary of Public Works and Communications of the face value of one thousand pesos, as an earnest of good faith and a guarantee that he will begin the electric light, heat and power business and may be completely provided with the necessary equipment therefore and ready

to begin operation in accordance with the terms of this franchise: *Provided, however,* That if such deposit is in cash, it may be made with some official depository of the Government in the name of the grantee and subject to the order of the National Treasurer, who shall retain the evidence of the deposit so made. In this case, as well as in the case of the deposit being made in negotiable bonds or other securities, as provided in this section, the interest of the cash deposit or of the bonds or securities deposited, if any, shall belong to the grantee.

In case such grantee shall fail, refuse or neglect, unless prevented by fortuitous cause or *force majeure*, public enemy, usurpation by military power, martial law, riot, civil commotion, or other inevitable cause, to commence the work for the electric light, heat and power service within six months from the date of acceptance of this franchise, or shall fail to provide the necessary equipment and be ready to operate within eighteen months after the date of such acceptance, in accordance with the terms of this franchise, then the deposit prescribed in this section and in the possession of the National Treasurer, whether in cash, bonds or other securities, shall be forfeited to the Provincial Government of Surigao, as damage for the breach of implied contract involved in the acceptance of this franchise, and this franchise shall be null and void. In case the grantee begins to operate the electric light, heat and power service and is ready for operation under this franchise, within the time limits specified, the deposit provided for in this section shall, upon recommendation by the Public Service Commission or its legal successor, be returned by the National Treasurer to said grantee: *Provided,* That the time during which such grantee has been prevented by any of the causes above referred to from carrying out the terms and conditions of this franchise shall be added to the time granted by this franchise for the fulfillment of its conditions.

SEC. 9. The municipality above-named shall have the privilege, without compensation, of using the poles of the grantee for the purpose of installing, maintaining and operating the police telephone and alarm system, but the wires of such telephone and alarm system shall be placed and stretched in such manner as to cause no interference with or damage to the wires of the electric service of the grantee.

SEC. 10. The grantee is forbidden to issue stock or bonds under this franchise except in exchange for actual cash or for property at a fair valuation equal to the par value of the stock or bonds issued and upon prior authority of the Public Service Commission. Nor shall said grantee declare any stock or bond as dividend.

SEC. 11. The books and accounts of the grantee shall always be open to the inspection of the Provincial Treasurer of Surigao or his authorized representative and it shall be the duty of the grantee to submit to the provincial treasurer quarterly reports in duplicate showing the gross receipts and the net receipts for the past quarter and the general condition of the business, one of which shall be forwarded by the provincial treasurer to the Auditor General who shall keep the same on file.

SEC. 12. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights or privileges acquired thereunder to any person, natural or juridical, nor merge with any other person, without the approval of the Congress of the Philippines first had. Any person, natural or juridical, to which this franchise may be sold, transferred or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person to which this franchise is sold, transferred or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to such person: *Provided*, That in case of any national emergency affecting and endangering the public safety and order, the Republic of the Philippines shall have the right to take possession of the electric light system, as provided in this Act, and operate the same until such emergency shall have passed.

SEC. 13. The Public Service Commission or its legal successor, after hearing the interested parties, upon notice and order in writing, shall have the power to declare the forfeiture of this franchise and all rights inherent in the same for failure on the part of the grantee to comply with any of the terms and conditions thereof, unless such failure shall have been directly and primarily caused by an act of God, public enemy or *force majeure*. Against such declaration of the forfeiture by the Public Service Commission or its legal successor, the grantee may apply for the remedies provided in Section thirty-five of Act Numbered Thirty-one hundred and eight, as amended.

SEC. 14. At any time after forty years from the date of the approval of this Act, the Republic of the Philippines or any of the political subdivisions thereof to which the right may be assigned, may purchase, and the grantee shall sell thereto, all of his plant, poles, wires, buildings, real estate and all other property used in the enjoyment of this franchise, at a valuation based in part upon the net earnings of the grantee and its true worth on the books, making the proper deduction for depreciation; in part on the cost of the actual reproduction of said prop-

erty, less depreciation, and, in part, on the original cost of said property, less depreciation, the valuation to be determined after hearing by the three Commissioners of the Public Service Commission, sitting as a board of arbitrators, whose decision by a majority of the members thereof shall be final.

SEC. 15. The rates for the light service, flat rate as well as meter rate, fixed by the grantee, shall always be subject to regulations by the Congress of the Philippines or by the proper authorities, and shall in no case be in excess of forty centavos per kilowatt hour: *Provided*, That only subscribers who have more than ten outlets installed in one building shall be entitled to be furnished with a meter.

SEC. 16. Whenever in this franchise, the term "grantee" is used, it shall be held and understood to mean and represent Rafael Consing, his representatives, successors or assigns.

SEC. 17. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2975

[REPUBLIC ACT No. 3004]

AN ACT GRANTING THE MARECO, INC., A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE RADIO BROADCASTING AND TELEVISION STATIONS IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the provisions of the Constitution, the Mareco, Inc., is hereby granted a franchise to construct, maintain and operate, for commercial purposes and in the public interest, radio broadcasting and television stations in the Philippines: *Provided*, That this franchise shall be void unless the construction of at least one radio broadcasting station or one television station be begun within two years from the date of approval of this Act, and be completed within four years from said date: *Provided, further*, That the grantee shall provide adequate public service time to enable the Government, through the said radio broadcasting and television stations, to reach the population on important public issues; shall assist in the functions of public information and education; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, speech, act or scene, or for the dissemination of deliberately false information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage, or assist in subversive or treasonable acts.

SEC. 2. Such provisions of Act Numbered Thirty-eight hundred forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Act Numbered Thirty-nine hundred ninety-seven, known as the Radio Broadcasting Law; Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, as are applicable to radio broadcasting stations shall be applied, as far as practicable, to the television stations referred to in Section one.

SEC. 3. As a condition of the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of fifty thousand pesos, in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after four years from the date of acceptance of this franchise, the grantee shall have fulfilled said obligations, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 4. Acceptance of this franchise shall be given in writing within six months after the approval of this Act. When so accepted by the grantee and upon approval of the bond aforesaid by the Secretary of Public Works and Communications, the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 5. The grantee's radio broadcasting and television stations shall not be put in actual operation until the Secretary of Public Works and Communications shall have allotted to the grantee the frequency and wave lengths to be used under this franchise and issued to the grantee a license for such use.

SEC. 6. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall *ipso facto* become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 7. (a) The grantee shall be liable to pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

(b) The grantee shall further be liable to pay all other taxes that may be imposed by the National Internal Revenue Code by reason of this franchise.

SEC. 8. The grantee shall hold the national, provincial and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations of the grantee.

SEC. 9. The franchise hereby granted shall be subject to amendment, alteration, or repeal by the Congress of the Philippines when the public interest so requires.

SEC. 10. In the event the Government should desire to maintain and operate for itself any or all of the stations herein authorized, the grantee shall turn over such station or stations to the Government with all the serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 11. A special right is reserved to the President of the Philippines in time of war, rebellion, public peril, or other national emergency, and when public safety requires, to cause the closing of said stations or to authorize the use and operation thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 12. The grantee shall not require any previous censorship of any speech, play, act or scene or other matter to be broadcast and/or telecast from its stations; but if any such speech, play, act or scene or other matter should constitute a violation of the law or infringement of a private right, the grantee shall be free from any liability, civil or criminal, for such speech, play, act or scene or other matter: *Provided*, That the grantee, during any broadcast and/or telecast, shall cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral, and willful failure to do so shall constitute a valid cause for the cancellation of this franchise.

SEC. 13. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise nor the rights and privileges acquired thereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the previous approval of the Congress of the Philippines first had. Any corporation to which this franchise is sold, transferred or assigned, shall be subject to all the conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 14. Whenever in this franchise the term "grantee" is used, it shall be held and understood to mean "Mareco, Inc.," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 15. This franchise shall not be interpreted as an exclusive grant of the privileges herein provided for.

SEC. 16. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

**DRED THIRTY-SEVEN, OTHERWISE KNOWN AS
TARIFF AND CUSTOMS CODE OF THE PHILIPPINES,
AND FOR OTHER PURPOSES.**

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Paragraph 71.02 of Chapter 71, Schedule XIV of Republic Act Numbered Nineteen hundred thirty-seven, is hereby amended to read as follows:

- "Precious and semiprecious stones,
unworked, cut or otherwise worked,
but neither set nor strung (except
ungraded stones temporarily strung
for convenience of transport):
- | | |
|------------------------------|---------------|
| A. Industrial diamonds | ad val. 10% |
| B. Others | ad val. 150%" |

SEC. 2. Paragraph 71.03 of Chapter 71, Schedule XIV of Republic Act Numbered Nineteen hundred thirty-seven, is hereby amended to read as follows:

- "Synthetic or reconstructed precious
or semiprecious stones, unworked,
cut or otherwise worked, but neither
set nor strung (except ungraded
stones temporarily strung for con-
venience of transport):
- | | |
|------------------------------|---------------|
| A. Industrial diamonds | ad val. 10% |
| B. Others | ad val. 100%" |

SEC. 3. Paragraph 71.04 of Chapter 71, Schedule XIV of Republic Act Numbered Nineteen hundred thirty-seven, is hereby amended to read as follows:

- "Dust and powder of natural or syn-
thetic precious or semiprecious
stones
- | |
|--------------|
| ad val. 10%" |
|--------------|

SEC. 4. This Act shall take effect upon its approval.
Enacted without Executive approval, June 19, 1960.

H. No. 152

[REPUBLIC ACT No. 3006]

**AN ACT GRANTING THE PHILIPPINE WIRELESS,
INC., A FRANCHISE TO ESTABLISH, MAINTAIN
AND OPERATE STATIONS FOR INTERNATION-
AL AND DOMESTIC COMMUNICATIONS.**

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Subject to the provisions of the Constitution and the provisions of Act Numbered Three thousand eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Commonwealth Act Numbered One hundred forty-six, known as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to the Philippine Wireless, Inc., hereinafter referred to as the "grantee," a franchise to establish, maintain and operate in the Philippines, at such places as the said grantee may select, circuits and/or stations for international and do-

mestic communications with the authority to receive and transmit messages, impressions, pictures, music, entertainment, advertising and signals throughout the Philippines and between the Philippines and foreign countries, including ships at sea, airplanes and other conveniences, by means of electricity, electromagnetic waves or any other kind of energy, force, variations or impulses whether conveyed by wires, radiated through space or transmitted through any other medium, to supply facilities for such purposes and to charge and receive compensation therefor by tolls and charges.

SEC. 2. Subject to the limitations and procedure prescribed by law, the grantee is authorized to exercise the right of eminent domain, insofar as may be reasonably necessary to further the establishment and efficient maintenance and operation of its circuits and/or stations and connecting them to one another. The grantee is authorized to construct and maintain its works of public utility and service over and across public property of the Philippines, including streets, highways, squares and reservations, and other similar property of the Government of the Philippines and its branches.

SEC. 3. This franchise shall continue for a period of fifty years from the date the said circuits and/or stations shall be put in operation, and is made upon the express condition that the same shall be void unless at least one international circuit and/or station or one domestic circuit and/or station be begun within one year from the date of the approval of this Act and be completed within two years from said date.

SEC. 4. (a) This franchise shall not take effect nor shall any powers thereunder be exercised by the grantee until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used thereunder and determined the stations to and from which each such frequencies and wave lengths may be used, and issued to the grantee a license for such use, unless the grantee shall use existing channels, circuits and/or stations of communication duly licensed by the Philippine Government.

(b) The Secretary of Public Works and Communications on reasonable notice to the grantee, may at any time change, or cancel, or modify, in whole or in part, any or all the allotments of frequencies or wave lengths to be used. He may take such action (1) whenever in his judgment such frequencies and wave lengths have been used, or there is danger that they will be used by the grantee to impair electrical communication, or stifle competition, or to obtain a monopoly in electrical communication, or to secure unreasonable rates for such communication, or otherwise to violate the laws or public policy of the Philippine Republic; (2) whenever in his judgment the public interests of the Philippines require that such frequencies or wave lengths should be used for other purposes than those of the grantee, either by the Government of the Philippines or by other individuals or corporations licensed by it; and (3) whenever in his judgment for any reason the public interests of the Philippines so require.

(c) The Secretary of Public Works and Communications is authorized to appoint, employ or make use of such boards,

commissions, or agents as in his discretion he may select, to investigate and determine the facts upon which he may act as aforesaid, and such boards, commissions and agents shall have the right by the compulsory process of *subpoena*, to summon witnesses, administer oaths and take evidence.

SEC. 5. (a) The stations of the grantee shall be so constructed and operated that a minimum of interference will result and the wave lengths selected with a view to avoiding interference with existing stations and to permit the expansion of the grantee's services.

(b) The operation of the circuits and/or stations of the grantee shall be in strict accordance with the provisions of the Philippine communication laws and regulations and of those of international communications laws, regulations and agreements to which the Republic of the Philippines is a signatory.

SEC. 6. A special right is hereby reserved to the President of the Philippines in time of war, rebellion, public peril or other national emergency and when public safety requires, to cause the closing of the grantee's circuits and/or stations or to authorize the use or possession thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 7. The operation and activities of the circuits and/or stations of the grantee shall contribute to the public welfare; shall conform to the ethics of honest enterprise; shall assist in the functions of public information and education; and shall not be used for the dissemination of deliberately false information, or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversive or treasonable acts.

SEC. 8. The right is hereby reserved to the Government of the Philippines, through the Public Service Commission, or such other office as may be hereunto duly authorized, to fix the minimum and maximum rates to be charged by the grantee.

SEC. 9. (a) The grantee shall comply with all the requirements of the Government applicable to duly organized corporations and to public communication carriers, and shall pay the same taxes on its real estate, buildings and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

(b) The grantee shall further pay to the Treasurer of the Philippines each year, one and one-half *per centum* of all gross receipts from business transacted under this franchise by the said grantee in the Philippines.

SEC. 10. The franchise hereby granted shall be subject to amendment, alteration or repeal by the Congress of the Philippines, and the rights to use and occupy public property and places hereby granted shall revert to the respective governments, upon the termination of this franchise, by such repeal or by forfeiture, or expiration in due course. Unless earlier terminated by any such repeal or forfeiture, or extended, the franchise and rights hereby granted shall terminate by expiration of fifty years after the date of the acceptance of this Act by the grantee.

SEC. 11. As a condition of the granting of this franchise, the grantee shall execute a bond in favor of the Government of the Philippines, in the sum of fifty thousand pesos in form and with sureties satisfactory to the Secretary of Public Works and Communications, conditioned upon the faithful performance of the grantee's obligations hereunder during the first three years of the life of this franchise. If, after three years from the date of the acceptance of this franchise, the grantee shall have fulfilled said obligations or soon thereafter as the grantee shall have fulfilled the same the bond aforesaid shall be cancelled by the Secretary of Public Works and Communications.

SEC. 12. Acceptance of the franchise shall be given in writing within one year after approval of this Act. When so accepted by the grantee and upon the approval of the bond aforesaid by the Secretary of Public Works and Communications the grantee shall be empowered to exercise the privileges granted thereby.

SEC. 13. The grantee shall not lease, transfer, grant the usufruct of, sell or assign this franchise, nor the rights or privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred or assigned shall be subject to all the conditions, terms, restrictions and limitations of this franchise as full and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 14. This franchise shall not be interpreted to mean an exclusive grant of the privileges herein provided for.

SEC. 15. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

H. No. 800

[REPUBLIC ACT No. 3007]

AN ACT GRANTING THE RAMIREZ TELEPHONE CORPORATION A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN TELEPHONE SYSTEM FOR DOMESTIC AND OVERSEAS COMMUNICATIONS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Commonwealth Act Numbered One hundred forty-six, as amended, and of the Constitution, there is hereby granted to the Ramirez Telephone Corporation, for a period of fifty years from the approval of this Act, the right and privilege to construct, maintain, and operate in Albay a telephone system and a long distance

telephone system covering the most feasible following routes: (1) Albay-Camarines Sur-Camarines Norte; (2) Albay-Manila, including all provinces and islands traversed; and (3) Albay-Mindanao, including all provinces and islands traversed, it being understood that the grantee is authorized to construct, operate and maintain such tributary lines and circuits throughout the above routes to connect with the main lines as the public interest may warrant. The grantee is authorized to carry on the business of the electrical transmission of conversations, messages, pictures, and signals in and between said provinces and the cities, municipalities and municipal districts therein, and for the purpose of operating said telephone systems and transmitting conversations, messages, pictures, and signals by means of electricity, to construct telephone lines in and between said provinces and cities, municipalities and municipal districts therein, to lay, place, operate and maintain telephone cables between the above routes and other countries; to construct, maintain, and operate, and use all apparatus, conduits, and appliances necessary for the electrical transmission of conversations, messages, pictures and signals; to erect poles and structures, string wires, build conduits and lay cables; and to construct, maintain and use such other approved and generally accepted means of electrical conduction in, on, over, or under the public roads, streets, government right-of-ways, lands, bridges, rivers, waters, lanes, and sidewalks of said provinces and cities municipalities and municipal districts therein, and overhead or underground lines or on the surface of the ground, and lay such submarine telephone cables in the surrounding waters of the above provinces and for the purpose of making connection with telephone systems of other countries, as may be necessary and best adapted to said transmission.

The grantee may install, maintain, and operate radio-telephone equipment to furnish an economical medium of telephonic communications in the routes mentioned in the preceding paragraph and between the Philippines and vessels, as well as between the Philippines and telephone systems of other countries: *Provided*, That the location, installation or operation of any such radio-telephonic or picture equipment must be previously approved by the Secretary of Public Works and Communications, who shall have authority to supervise and regulate the installation or operation of such radio-telephone or picture equipment: *Provided, further*, That this privilege to install, maintain and operate radio-telephonic or picture equipment shall not be construed to authorize the broadcasting of any commercial message, or the transmission of any facsimile message for hire by radiographic equipment.

SEC. 2. All cables laid, all poles erected and all conduits constructed or used by the grantee shall be located in places designated by the provincial, city, municipal or municipal district authorities concerned: *Provided*, That all poles erected and used by the grantee shall be of such appearance as not to disfigure the roads or streets, and the wires and cables carried by said poles and the underground cables shall be strung and laid in accordance with professional standards approved by the

Public Service Commission; and said poles shall be of such height as to maintain the wires and cables stretched on the same at a height of at least fifteen feet above the level of the ground, and said wires and cables shall be so placed as not to imperil the public safety, in accordance with a plan approved by the Public Service Commission: *Provided, further*, That whenever twenty-five or more pairs of wires or other conductors are carried on one line of poles in any place of the poblacion of any city, municipality or municipal district in the territories covered by this franchise, said wires and conductors shall be placed in one cable, and whenever more than eight hundred pairs of wires or other conductors are carried on one line of poles, said wires or conductors shall be placed underground by the grantee, whenever ordered to do so by the Public Service Commission.

SEC. 3. For the purpose of erecting and placing the poles or other supports of such wires or other conductors, or of laying and maintaining underground said wires, cables or other conductors, it shall be lawful for the grantee to make excavations or lay conduits in any of the public places, highways, streets, alleys, lanes, avenues, sidewalks or bridges in the territories covered by this franchise: *Provided*, That any public place, highway, street, alley, lane, avenue, sidewalk, or bridge disturbed, altered or changed by reason of the erection of poles or other supports, or the laying underground of wires or other conductors, or of conduits, shall be repaired and restored to the satisfaction of the highway district engineer or city engineer concerned, removing from the same all rubbish, dirt, refuse, or other materials which may have been placed there or taken up in the erection of said poles or the laying of said underground conduits, and leaving them in as good condition as they were before the work was done.

SEC. 4. Whenever any person has obtained permission to use any of the roads or streets in the territories covered by this franchise for the purpose of removing any building or in the prosecution of any provincial or municipal work or for any other cause, making it necessary to relocate poles or to raise or remove any of said wires or conduits which may obstruct or hinder the prosecution of said work, the grantee, upon notice by the provincial board, city board or council, municipal council or municipal district council concerned, served upon the grantee at least forty-eight hours in advance, shall relocate said poles, or raise or remove any of said wires or conduits which may hinder the prosecution of such work or obstruct the removal of said building, so as to allow the free and unobstructed passage of said building and the free and unobstructed prosecution of said work; and the person or entity at whose request the wires or poles or other structures have been removed shall pay one-half of the actual cost of replacing or relocating the poles or raising the wires and other conductors or structures. The notice shall be in the form of a resolution duly adopted by the provincial board, city board or council, municipal council or municipal district council and served upon the grantee or his duly authorized representative or agent by a person competent to testify as witness in a civil action; and in

case of refusal or failure of the grantee to comply with such notice, the provincial governor, city mayor, municipal mayor or municipal district mayor, with the proper approval of the provincial board, city board or council, municipal council or municipal district council, as the case may be, first had, shall order such poles to be re-located or such wires or conduits to be raised or removed at the expense of the grantee for the purpose aforesaid.

SEC. 5. All apparatus and appurtenances used by the grantee shall be modern and first class in every respect, and all telephone lines or installations used, maintained and operated in connection with this franchise by the grantee shall be kept and maintained at all times in a satisfactory manner, so as to render an efficient and adequate telephone service; and it shall further be the duty of the grantee, whenever required to do so by the Public Service Commission, to modify, improve, and change such telephone systems for the electrical transmission of conversations, messages, pictures and signals by means of electricity in such manner and to such extent as the progress of science and improvements in the method of electrical transmission of conversations, messages, pictures and signals by means of electricity may make reasonable and proper.

Pursuant to the foregoing provision, it is expressly provided as one of the conditions of this grant of franchise that the grantee shall, within one year, change with new apparatus and appurtenances which are modern, first class in every respect the telephone system now operated by the grantee in the Province of Albay, particularly in the City of Legaspi: *Provided, however,* That for justified cause the Public Service Commission may extend the one year period by six months. Failure on the part of the grantee to comply with this condition will render this grant of franchise null and void.

SEC. 6. The grantee shall keep a separate account of the gross receipts of its telephone business in each city, municipality or municipal district, and shall furnish the Auditor General and the Treasurer of the Philippines a copy of such accounts not later than the thirty-first day of July of each year for the twelve months preceding the first day of July.

SEC. 7. The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition, the grantee shall pay to the Treasurer of the Philippines each year, within ten days after audit and approval of the accounts referred to in Section six of this Act, one *per centum* of all gross receipts of the telephone business transacted under this franchise by the grantee, and the said percentage shall be in lieu of all taxes on this franchise or its earnings.

SEC. 8. The grantee shall not begin any construction whatever pursuant to this franchise without first obtaining a certificate of public necessity and convenience from the Public Service Commission, of the form and character provided for in Commonwealth Act Numbered One hundred forty-six, as amended, specifically authorizing such construction. The grantee shall not exercise any right or

privilege under this franchise without first having obtained such certificate of public necessity and convenience from the Public Service Commission. The Public Service Commission shall have the power to issue such certificate of public necessity and convenience whenever it shall, after due hearing, determine that such construction or such exercise of the right, privilege or franchise, is necessary and proper for the public convenience, and the Commission shall have the power in so approving to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require, and such certificate shall state the date the grantee shall commence construction work and the period within which the work shall be completed. In order to avail itself of the rights granted by such certificate of public necessity and convenience, the grantee must file with the Public Service Commission, within such period as said Commission shall fix, its acceptance in writing of the terms and conditions of said certificate, together with the document evidencing the fact that the deposit required by said certificate has been made. In the event that the grantee shall not commence the furnishing of telephone service referred to in the certificate obtained and filed as herein provided within such period as the Public Service Commission shall have fixed, said Commission may declare such certificate null and void and the deposit made pursuant to Section nine of this Act forfeited to the National Government unless the grantee shall have been prevented from doing so by act of God, *force majeure*, usurpation by military power, martial law, riot, uprising, or other cause beyond its control: *Provided*, That if the grantee shall have been so prevented by one or more or all of such causes from commencing to furnish telephone service within the period specified, the time during which it shall have been so prevented shall be added to said period.

SEC. 9. The grantee shall be required by the Public Service Commission for each certificate of public necessity and convenience obtained by it, to make within such period as the said Commission shall fix, a deposit of not less than one thousand pesos, Philippine currency, or negotiable bonds of the Government of the Philippines, or other securities approved by the Public Service Commission, of the par value of not less than one thousand pesos, Philippine currency, in the National Treasury as a guaranty of good faith that the grantee, within the period also specified by the Public Service Commission, shall commence and terminate the necessary work and shall be provided with all the equipment necessary to commence furnishing telephone service in the corresponding province or provinces. The Public Service Commission shall order the return of the deposit hereby required to the grantee upon the termination of the work for the furnishing of telephone service in accordance with the terms and conditions of the certificate obtained, and the Treasurer of the Philippines shall return said deposit immediately upon presentation to him of a certified copy of the order of the Public Service Commission.

SEC. 10. Within forty days after the approval of this Act, the grantee shall file with the Secretary of Public Works and Communications its written acceptance of this

franchise and of all the terms and conditions hereof, and in default of such acceptance within the time so limited, this franchise shall become null and void.

SEC. 11. Within six months after the approval of this Act, the grantee shall file application with the Public Service Commission for a certificate of public necessity and convenience authorizing it to construct, operate, and maintain a long distance telephone line connecting Albay, Camarines Sur and Camarines Norte. Six months after the issuance of the said certificate by the Public Service Commission, the grantee shall commence the construction of the line, and shall begin transmitting messages within twelve months from the date of the issuance of said certificate of public necessity and convenience, unless prevented by act of God, public calamity or any unforeseen circumstances beyond the control of the grantee. The grantee shall construct the different long distance telephone lines in the order in which they are stated in Section one of this Act; and should the grantee fail to comply with the conditions set forth in any of the certificates mentioned in Section eight of this Act, then this franchise shall become null and void as to the particular long distance telephone line covered by the certificate not so complied with, or the grantee may be subject to a fine not exceeding five thousand pesos, at the discretion of the aforesaid Commission.

SEC. 12. As a guaranty that this franchise has been accepted in good faith and that, within twelve months from the date of the granting by the Public Service Commission of a certificate of public necessity and convenience authorizing the construction and operation by the grantee of a long distance telephone line connecting Albay, Camarines Sur and Camarines Norte, the grantee will be fully equipped and ready to operate according to the terms of this franchise such long distance telephone line connecting Albay, Camarines Sur and Camarines Norte and shall furthermore extend its other long distance telephone lines as rapidly as conditions so warrant in the judgment of the grantee, the grantee shall deposit with the Treasurer of the Philippines, within ten days from the granting of such certificate of public necessity and convenience, the sum of twenty-five thousand pesos, or negotiable bonds of the Government of the Philippines or other securities, approved by the Secretary of Public Works and Communications, of the face value of twenty-five thousand pesos: *Provided*, That if the deposit is made in money, the same shall be deposited at interest in some interest-paying bank approved by the Secretary of Public Works and Communications, and all interest accruing and due on such deposit shall be collected by the Treasurer of the Philippines and paid to the grantee on demand: *Provided, further*, That if the deposit made with the Treasurer of the Philippines be in negotiable bonds of the Government of the Philippines or other interest-bearing securities approved by the Secretary of Public Works and Communications, the interest on such bonds or securities shall be collected by the Treasurer of the Philippines and paid over to the grantee on demand.

Should the grantee, for any other cause than an act of God, public enemy, usurpation by military power,

martial law, riot, civil commotion, or other inevitable cause, fail, refuse, or neglect to begin within twelve months from the date of the granting of said certificate of public necessity and convenience the business of transmitting messages by telephone, or fail, refuse, or neglect to be fully equipped and ready to operate within twelve months from the date of the granting of said certificate of public necessity and convenience a long distance telephone line connecting Albay, Camarines Sur and Camarines Norte according to the terms of this franchise, then the deposit prescribed by this section to be made with the Treasurer of the Philippines, whether in money, bonds, or other securities, shall become the property of the National Government as liquidated damages caused to such Government by such failure, refusal, or neglect, and thereafter no interest on said bonds or other securities deposited shall be paid to the grantee. Should the grantee begin the business of transmitting messages by telephone and be ready to operate according to the terms of this franchise a long distance telephone line connecting Albay, Camarines Sur and Camarines Norte within twelve months from the date of the granting of said certificate of public necessity and convenience, then and in that event the deposit prescribed by this section shall be returned by the National Government to the grantee upon recommendation of the Public Service Commission, as soon as the telephone line connecting Albay, Camarines Sur and Camarines Norte has been installed in accordance with the terms of this franchise: *Provided, further,* That all the time during which the grantee may be prevented from carrying out the terms and conditions of this franchise by any of said causes shall be added to the time allowed by this franchise for compliance with its provisions.

SEC. 13. The books of accounts of the grantee shall always be open to inspection by the provincial auditors or their authorized representatives, and it shall be the duty of the grantee to submit to the Auditor General quarterly reports in duplicate showing the gross receipts and the net receipts for the quarter past and the general condition of the business.

SEC. 14. The grantee shall supply telephone service in the territories covered by this franchise to any applicant therefor, within thirty days after the date of his application, and as between such applicant and other like applicants, in the order of the date of their applications, up to the limit of the capacity of the local telephone system of the grantee, to be determined by the Public Service Commission on the application of said grantee; and should the demand for telephone service at any time increase beyond the capacity of the local telephone system of the grantee to supply the same, the capacity of said telephone system shall be increased by the grantee to meet such demand, in accordance with the decision of the Public Service Commission: *Provided,* That in case the point at which the telephone service is to be supplied is more than fifty meters from the local exchange lines operated by the grantee, the latter shall not be obliged to furnish said service, unless the applicant for telephone service defrays the actual expenses for the poles and wires and installation thereof necessary for such service, and in such cases the

Public Service Commission may extend the time within which the grantee must furnish such service beyond the said period of thirty days.

SEC. 15. The rights herein granted shall not be exclusive, and the rights and power to grant to any corporation, association, or person other than the grantee franchise for the telephone or electrical transmission of conversations, messages, pictures and signals shall not be impaired or affected by the granting of this franchise: *Provided*, That the poles erected, wires strung or cables or conduits laid by virtue of any franchise for telephone, or other electrical transmission of conversations, messages, pictures and signals granted subsequent to this franchise shall be so placed as not to impair the efficient and effective transmission of conversations, messages, pictures or signals under this franchise by means of poles erected, wires strung, or cables or conduits actually laid and in existence at the time of the granting of said subsequent franchise: *Provided, further*, That the Public Service Commission, after hearing both parties interested, may compel the grantee of this franchise to remove, relocate, or replace its poles, wires or conduits; but in such cases the reasonable cost of the removal, relocation, or replacement shall be paid by the grantee of the subsequent franchise to the grantee of the franchise.

SEC. 16. The grantee shall hold the national, provincial, city, municipal and municipal district governments harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the telephone or other electrical transmission system of the grantee.

SEC. 17. The rates for the telephone service, flat rates as well as measured rates, shall be subject to the approval of the Public Service Commission.

The monthly rates for telephones having a metallic circuit within the limits of the poblacion of any city, municipality or municipal district in the territories covered by this franchise shall also be approved by the Public Service Commission.

SEC. 18. The grantee shall not, without the previous and explicit approval of the Congress of the Philippines, directly or indirectly transfer, sell, or assign this franchise to any person, association, company, or corporation, or other mercantile or legal entity.

SEC. 19. The grantee may install, maintain, operate, purchase or lease such telephone stations, lines, cables or systems as are convenient or essential to efficiently carry out the purpose of this franchise: *Provided*, That the grantee shall not, without the permission of the Public Service Commission first had, install, maintain, operate, purchase or lease such stations, lines, cables, or systems.

SEC. 20. The Philippine Government shall have the privilege, without compensation, of using the poles of the grantee to attach one ten-pin crossarm, and to install, maintain and operate wires of its telegraph system thereon: *Provided*, That the Bureau of Telecommunications shall have the right to place additional crossarms and wires on the poles of the grantee by paying a compensa-

tion the rate of which is to be agreed upon by the Director of Telecommunications and the grantee: *Provided, further*, That in case of disagreement as to rate of contract rental, the same shall be fixed by the Public Service Commission. The provinces, cities, municipalities and municipal districts in the territories covered by this franchise shall also have the privilege, without compensation, of using the poles of the grantee, to attach one standard crossarm, and to install, maintain and operate wires of a local police and fire alarm system; but the wires of such telegraph lines, police or fire alarm system shall be placed and strung in such manner as to cause no interference with or damage to the wires of the telephone service of the grantee.

SEC. 21. In the event the Government should desire to maintain and operate for itself the enterprise or any of the telephone systems herein authorized, the grantee shall surrender its franchise or said telephone system and shall turn over to the Government said enterprise or telephone system and all serviceable equipment thereof at cost, less reasonable depreciation.

SEC. 22. This franchise shall not be construed as authorizing the grantee to engage in the business of sending or receiving radiotelegraphic messages for hire.

SEC. 23. Wherever in this franchise the term "grantee" is used, it shall be held and understood to mean the "Ramirez Telephone Corporation," its representatives, successors or assigns, unless the context indicates otherwise.

SEC. 24. This franchise is granted under the condition that it shall be subject to amendment, alteration or repeal by the Congress when the public interest so requires.

SEC. 25. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2978

[REPUBLIC ACT No. 3008]

AN ACT GRANTING JOSE S. RUSTIA OF MANILA
A FRANCHISE TO ESTABLISH RADIO STATIONS
FOR DOMESTIC TELECOMMUNICATIONS.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Subject to the provisions of the Constitution, and to the provisions not inconsistent herewith of Act Numbered Three thousand eight hundred and forty-six, entitled "An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;" Commonwealth Act Numbered One hundred forty-six, know as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to Jose S. Rustia of Manila, his successors or assigns, the right and privilege of constructing, installing, establishing and operating in the Philippines, at such places as the said grantee may select and the Secretary of Public Works and Communications may approve, radio stations for the reception and transmission of wireless messages on radiotelegraphy and/or radiotelephony, includ-

ing both coastal and marine telecommunications, each station to consist of two radio apparatus comprising of a receiving and sending radio apparatus.

SEC. 2. The President of the Philippines shall have the power and authority to permit the construction of said stations or any of them on any land of the public domain upon such terms and conditions as he may prescribe.

SEC. 3. This franchise shall continue for a period of fifty years from the date the first of said stations shall be placed in operation, and is granted upon the express condition that the same shall be void unless the construction of said stations is begun within two years from the date of the approval of this Act and completed within four years from said date.

SEC. 4 (a) This franchise shall not take effect nor shall any power hereunder be exercised by the grantee until the Secretary of Public Works and Communications shall have allotted to the grantee the frequencies and wave lengths to be used, and issued to the grantee a license for such use.

In allotting to the grantee the frequencies and wave lengths, due regard should be given to the program of the Government on expanding its radio telecommunications.

(b) The Secretary of Public Works and Communications, on reasonable notice to the grantee, may at any time change, or cancel, or modify, in whole or in part, any or all of the allotments of frequencies or wave lengths to be used. He may take such actions (1) whenever in his judgment such frequencies and wave lengths have been used, or there is danger that they will be used by the grantee to impair electrical communication, or to secure unreasonable rates for such communication, or to violate otherwise the laws or public policy of the Philippine Republic; (2) whenever in his judgment the public interests of the Republic of the Philippines require that such frequencies or wave lengths should be used for purposes other than those of the grantee, either by the Government of the Philippines or by other individuals or corporations licensed by it; and (3) whenever in his judgment, for any reason, the public interests of the Philippines so require.

SEC. 5. The stations of the grantee shall be so constructed and operated and the wave lengths so selected as to avoid interference with existing stations and to permit the expansion of the grantee's services.

SEC. 6. A special right is reserved to the President of the Philippines in time of war, rebellion, public peril, or other national emergency and when public safety requires, to cause the closing of the said stations or to authorize the use and operation thereof by any department of the Government without compensation to the grantee for the use of said stations during the continuance of the national emergency.

SEC. 7. The grantee shall hold the national, provincial, and municipal governments of the Philippines harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the stations of the grantee.

SEC. 8. No private property shall be taken for any purpose by the grantee without proper condemnation pro-

ceedings and just compensation paid or tendered therefor, and any authority to take and occupy land contained herein shall not apply to the taking, use, or occupation of any land except such as is required for the actual necessary purposes for which this franchise is granted.

SEC. 9. The grantee shall keep an account of the gross receipts of its business and shall furnish the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of January of each year for the preceding year. All the books and accounts of the grantee pertaining to his business shall be subject to the official inspection of the Auditor General or his authorized representatives, and the audit and approval of such accounts shall be final and conclusive evidence as to the amount of said gross receipts, except that the grantee shall have the right to appeal to the courts of the Philippines, under the terms and conditions provided in the laws of the Philippines.

SEC. 10. The grantee, his successors or assigns, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted.

SEC. 11. The grantee shall file a bond in the amount of fifty thousand pesos to guaranty the full compliance and fulfillment of the conditions of this franchise. If, after four years from the date of the approval of this Act, the grantee shall have fulfilled said conditions, or as soon thereafter as the grantee shall have fulfilled the same, the bond aforesaid shall be cancelled by the Government.

SEC. 12. The grantee shall not lease, grant the usufruct of, sell or assign this franchise, nor the rights or privileges acquired hereunder to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other person, company, or corporation organized for the same purpose, without the approval of the Congress of the Philippines first had. Any corporation to which this franchise may be sold, transferred, or assigned, shall be subject to the corporation laws of the Philippines now existing or hereafter enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred, or assigned shall be subject to all conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 13. In the event of any competing individual, partnership or corporation receiving from the Congress a similar franchise in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, *ipso facto*, become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation.

SEC. 14. (a) The grantee shall pay the same taxes on its real estate, buildings, and personal property, exclusive of the franchise, as other persons or corporations are now or hereafter may be required by law to pay.

(b) The grantee shall further pay to the Treasurer of the Philippines each year, within ten days after the audit

and approval of the accounts as prescribed in this Act, one and one-half *per centum* of all gross receipts from the business transacted under this franchise by the said grantee.

SEC. 15. This franchise shall not be interpreted to mean an exclusive grant of the privileges herein provided for.

SEC. 16. This Act shall take effect upon its approval.

Enacted without Executive Approval, June 19, 1960.

H. No. 4404

[REPUBLIC ACT No. 3009]

AN ACT AMENDING SECTIONS ONE AND TWO OF
REPUBLIC ACT NUMBERED ONE THOUSAND
TWO HUNDRED SIXTY-EIGHT.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Sections one and two of Republic Act Numbered One thousand two hundred sixty-eight are hereby amended to read as follows:

"SECTION 1. The Director of Lands is hereby directed to sell to actual occupants the portions of land and all dried esteros and/or reclaimed esteros belonging to the Republic of the Philippines, situated at the northeast and southeast intersections of Quezon Boulevard and C. Lerma Street in the City of Manila: *Provided, however,* That all lots bordering Quezon Boulevard and C. Lerma Street shall be sold and used for commercial purposes: *Provided, further,* That the area of each lot to be sold to the actual occupant thereof shall not exceed two hundred square meters.

"SEC. 2. The Director of Lands shall cause the property mentioned in Section one to be sub-divided into lots corresponding to the areas actually occupied by the present occupants, giving allowance for such alleys of two meters wide as may be deemed necessary for fire escape and other purposes, the cost of the survey and sub-division to be considered as part of the purchase price to be paid by the occupants for their respective lots: *Provided, however,* That the areas in excess of two hundred square meters occupied by the present occupants shall be available to the other actual occupants whose lots will be reduced in area by the construction of the necessary alleys and/or to the adjoining actual occupants occupying lots less than two hundred square meters in area."

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 4515

[REPUBLIC ACT No. 3010]

AN ACT AMENDING SECTION THIRTY-EIGHT OF
REPUBLIC ACT NUMBERED FOUR HUNDRED
NINE, OTHERWISE KNOWN AS THE REVISED
CHARTER OF THE CITY OF MANILA.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. Section thirty-eight of Republic Act Numbered Four hundred nine, as amended by Republic Act Numbered Eighteen hundred sixty, is further amended to read as follows:

"SEC. 38. *The City Fiscal and Assistant City Fiscals.*—There shall be in the Office of the City Fiscal one chief to be known as the City Fiscal with the rank of a district judge, an assistant chief to be known as the first assistant city fiscal, three second assistant city fiscals who shall be the chiefs of divisions, and fifty-seven assistant fiscals, who shall discharge their duties under the general supervision of the Secretary of Justice. To be eligible for appointment as City Fiscal one must be a citizen of the Philippines and must have practiced law in the Philippines for a period of not less than ten years or held during a like period an office in the Philippine Government requiring admission to the practice of law as an indispensable requisite. To be eligible for appointment as assistant fiscal one must be a citizen of the Philippines and must have practiced law for at least five years prior to his appointment or held during a like period an office in the Philippine Government requiring admission to the practice of law as an indispensable requisite.

"The City Fiscal and his assistants shall receive the salaries hereinafter set forth, which shall be paid by the City of Manila:

"(a) City Fiscal, twelve thousand pesos *per annum*.

"(b) First assistant city fiscal, eleven thousand six hundred pesos *per annum*.

"(c) Three second assistant city fiscals who shall be the chiefs of the three divisions, eleven thousand five hundred pesos *per annum* each.

"(d) Six assistant fiscals, eleven thousand pesos *per annum* each.

"(e) Six assistant fiscals, ten thousand five hundred pesos *per annum* each.

"(f) Six assistant fiscals, ten thousand pesos *per annum* each.

"(g) Six assistant fiscals, nine thousand six hundred pesos *per annum* each.

"(h) Six assistant fiscals, nine thousand pesos *per annum* each.

"(i) Six assistant fiscals, eight thousand four hundred pesos *per annum* each.

"(j) Six assistant fiscals, seven thousand eight hundred pesos *per annum* each.

"(k) Ten assistant fiscals, seven thousand two hundred pesos *per annum* each.

"(l) Five assistant fiscals, six thousand pesos *per annum* each."

SEC. 2. All incumbent assistant fiscals of the City of Manila occupying positions affected by the preceding section at the time of the approval of this Act, shall continue to occupy their respective positions and receive the salary increase herein provided without the necessity of any new appointment.

Only those in paragraph (l) shall require appointments.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 10

January 4, 1961

APPOINTING MUNICIPAL ATTORNEY EMILIO G. GARCIA OF BALIWAG TO ASSIST THE PROVINCIAL FISCAL OF BULACAN.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Atty. Emilio G. Garcia, Municipal Attorney of Baliwag, Bulacan, is hereby appointed Special Counsel, effective immediately and to continue until further orders, to temporarily assist the Provincial Fiscal of Bulacan, in the investigation and prosecution of all illegal construction, inimical to the health, sanitation and esthetic interest of the municipality of Baliuag, subject to the control and supervision of the said Provincial Fiscal.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 11

January 4, 1961

APPOINTING TEMPORARILY ASSISTANT PROVINCIAL FISCAL EDMUNDO M. RUADO OF ROMBLON AS ACTING PROVINCIAL FISCAL OF SAID PROVINCE.

In the interest of the public service and pursuant to the provisions of section 1679 of the Revised Administrative Code, Mr. Edmundo M. Ruado, Assistant Provincial Fiscal of Romblon, is hereby temporarily appointed Acting Provincial Fiscal of said province during the leave of absence of the regular incumbent beginning January 1, 1961 and to continue until the return to duty of the Provincial Fiscal.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 12

January 16, 1961

AUTHORIZING DISTRICT JUDGE VICENTE CUSI, JR., OF DAVAO TO HOLD COURT IN COTABATO.

In the interest of the administration of justice and pursuant to the provisions of section 51 of Republic Act 296, as amended, the Honorable Vicente Cusi, Jr., District Judge of Davao, 1st Branch, is hereby authorized to hold court in Cotabato, for a period of not more than three (3) months beginning March 1, 1961, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 13

January 17, 1961

AUTHORIZING DISTRICT JUDGE MARIANO V. BENEDICTO OF MASBATE TO HOLD COURT IN BONTOC, MOUNTAIN PROV- INCE.

In the interest of the administration of justice and pursuant to the provisions of section 51 of Republic Act 296, as amended, the Honorable Mariano V. Benedicto, District Judge of Masbate, is hereby authorized to hold court in Bontoc, Mountain Province, for a period of not more than three (3) months beginning March 1, 1961, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 14

January 17, 1961

DESIGNATING SPECIAL PROSECUTORS PER- FECTO QUERUBIN AND FLORENTINO FLOR TO ASSIST THE PROVINCIAL FISCAL OF CAGAYAN.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Messrs. Perfecto Querubin, and Florentino Flor, Special Prosecutors in this Department are hereby designated, effective immediately and to continue until further orders, to assist the Provincial Fiscal of Cagayan in the investigation and prosecution of

those persons involved in the reported landing of smuggled articles in Cagayan prior to and in December, 1960, on complaint of Gov. Felipe Garduque, and Messrs. Querubin and Flor are administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this Department.

This amends, Administrative Order No. 4, dated January 4, 1961, of this Department.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 15

January 17, 1961

APPOINTING MUNICIPAL ATTORNEY MARIANTO S. MONTE OF PANIQUE, TARLAC, TO ASSIST TEMPORARILY THE PROVINCIAL FISCAL OF SAID PROVINCE.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Atty. Marianito S. Monte, Municipal Attorney of Paniqui, Tarlac, is hereby appointed Special Counsel, effective immediately and to continue until further orders, to temporarily assist the Provincial Fiscal of Tarlac in the investigation and prosecution of criminal cases arising within the municipality of Paniqui, subject to the control and supervision of the said Provincial Fiscal, in addition to his regular duties as Municipal Attorney, without additional compensation.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 16

January 17, 1961

APPOINTING MUNICIPAL ATTORNEY MANUEL V. DIGON, JR., OF LA CASTELLANA, NEGROS OCCIDENTAL TO ASSIST TEMPORARILY THE PROVINCIAL FISCAL OF SAID PROVINCE.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, as amended, Atty. Manuel V. Digon, Jr., Municipal Attorney of La Castellana, Negros Occidental, is hereby appointed Special Counsel, effective immediately and to continue until further orders, to temporarily assist the Provincial Fiscal of Negros Occidental, in the investigation and prosecution of criminal cases

arising within the municipality of La Castellana, subject to the control and supervision of the said Provincial Fiscal, in addition to his regular duties as Municipal Attorney, without additional compensation.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 17

January 17, 1961

APPOINTING DEPUTY CLERK HERACLIO V. MALAKI OF THE MUNICIPAL COURT OF DAVAO CITY TO ASSIST THE CITY ATTORNEY OF SAID CITY.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, as amended, Atty. Heracleio V. Malaki, Deputy Clerk of Court-Legal Researcher of the Municipal Court of Davao City, is hereby appointed Special Counsel, effective immediately and to continue until further orders, to assist the City Attorney of Davao City, in the investigation of complaints lodged in the office of the City Attorney and/or prosecution of criminal cases filed with the Municipal Court of said City, subject to the control and supervision of the said City Attorney, without additional compensation.

ALEJO MABANAG
Secretary of Justice

ADMINISTRATIVE ORDER No. 18

January 20, 1961

DESIGNATING SPECIAL PROSECUTOR ENRIQUE A. AGANA TO ASSIST THE CITY FISCAL OF CEBU CITY.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Mr. Enrique A. Agana, Special Prosecutor in this Department, is hereby designated, effective immediately and to continue until further orders, to assist the City Fiscal of Cebu City, in the investigation and prosecution of the complaint filed by Mrs. Hermosa Paul-Sy Saab for Bigamy against Alfredo Saab, and Mr. Agana is administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this Department.

ALEJO MABANAG
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF PLANT INDUSTRY

PLANT INDUSTRY ADMINISTRATIVE ORDER NO. 2-2

January 5, 1961

AMENDMENT TO PLANT INDUSTRY ADMINISTRATIVE ORDER NO. 2, DATED AUGUST 8, 1960, AS REVISED, KNOWN AS THE REGULATIONS GOVERNING THE IMPORTATION AND EXPORTATION OF PLANT MATERIALS INTO AND FROM THE PHILIPPINES.

1. SECTIONS 16 and 18 of Plant Industry Administrative Order No. 2, revised and reamended is hereby further amended to read as follows:

16. The following schedule of fees shall be collected:

For the inspection and certification of logs, timber or lumber destined to countries where phytosanitary certificate is required, a fee of ₱3.00 for each 1,000 board feet or a fraction thereof, based on the official measurement of the Bureau of Forestry shall be collected.

The usual fees for fumigation or disinfection shall be collected whenever any of such treatment has been applied.

For this purpose, a cubic meter is equivalent to 424 board feet.

18. *Certification of Plant Materials for Exportation:*—"If the plant materials upon inspection are found to be free from plant diseases and injurious insects, a certificate (B.P.I. Form No. 41) shall be issued by the plant quarantine officer to the exporter to accompany the shipment or the correspondence regarding the shipment, as the case may be. A copy of such certificate shall be filed in the plant quarantine office. A tag (B.P.I. Form No. 42) issued by the said office to the exporter should be attached to the shipment. Plant materials showing the presence of injurious insects or plant diseases shall be returned to the exporter without certification. Under no condition shall certificates of freedom from diseases and injurious insects be given for plant materials which have been taken from, or mixed with, other plants which are badly diseased or infested. Certificates of inspection of plant materials for exportation shall be given only after careful investigation of the history of such plant materials. Certification shall not be made for any plant materials intended for shipment to a country in which their entrance is absolutely prohibited" and logs, timber, or lumber destined to countries where phytosanitary certificate is not required.

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2. *Date of effectivity:*—This Order shall take effect on the date of its approval.

Approved: April 14, 1961.

CESAR M. FORTICH

*Secretary of Agriculture and
Natural Resources*

Recommended by:

EUGENIO E. CRUZ

Director of Plant Industry

BUREAU OF FISHERIES

FISHERIES ADMINISTRATIVE ORDER NO. 62

July 19, 1960

PROHIBITION THE OPERATION OF TRAWL IN THE NORTHERN AND NORTHWESTERN WATERS OF BOHOL FOR A PERIOD OF FIVE YEARS.

Pursuant to the provisions of Section 4 of Act 4003, as amended, and for the protection and conservation of the fishery resources in the Northern and Northwestern waters of Bohol the following regulation is hereby promulgated:

1. *Definition.*—Trawl shall mean, for the purpose of this Order, a kind of funnel-shaped net with the mouth kept open during fishing by a device, such as a pair of otter-door or beam, towed by one or two boats to capture fish that come across its way.

2. *Prohibition.*—It shall be unlawful for any person to operate any kind of trawl in the Northern and Northwestern waters of Bohol, inside an imaginary line drawn from Sandingan Island to the southern tip of Cabilao Island of the municipality of Calape, on the western part of the province of Bohol to Tugas Point of Lapinin Island on the northeastern part of the province, passing through Bagambanua Island, Mocaboc Island, Coamen Island, Cabulan Island, Caubyan Island (following bare low water areas and crossing Middle Pass and Northeast Pass) and Tood Island, for a period of five consecutive years from the date of effectivity of this Administrative Order.

3. *Exemption.*—The Secretary of Agriculture and Natural Resources may grant free of charge to any person, association or corporation of good standing, a special permit to use trawl for fishing purposes, in the prohibited area within the Northern and Northwestern waters of Bohol, provided that it is used exclusively for scientific, educational or propagational purposes, subject to such conditions and limitations as may be prescribed for the proper protection and conservation of fishes in the said area.

Persons, associations or corporations duly authorized to use trawl for fishing herein but found using the same for purposes other than those specified in the permit shall be subject to the same penalty as if no permit has been granted.

4. *Enforcement.*—For the purpose of enforcing the provisions of this Administrative Order, fishery agents and fishery inspectors; members of the Philippine Naval Patrol; members of the Philippine Constabulary and Philippine Army; members of the provincial, city and municipal police; members of the secret service force; harbor police and inspectors; guards and wharfingers of the Bureau of Customs, Internal Revenue Officers and agents; officers and coast guard cutters, lighthouse keepers and such other competent officials, employees or persons as may be designated in writing by the Secretary of Agriculture and Natural Resources are hereby made deputies of said Department Head and empowered:

- (a) To arrest any person found committing or attempting to commit an offense against the provisions of this Administrative Order;
- (b) To seize or confiscate, when deemed necessary, for evidence or for such purposes as the Secretary of Agriculture and Natural Resources or his duly authorized

representative may consider advisable, any fishing gear or apparatus or fishing equipment used in violation of this Administrative Order; and

- (c) To take the necessary court action for any violation of this Administrative Order; and to report said violation to the Secretary of Agriculture and Natural Resources.

5. *Penalty.*—Any violation of this Administrative Order shall subject the offender to the penalty prescribed by Section 83 of the Fisheries Act.

6. *Repealing Clause.*—All existing administrative orders and regulations or parts thereof which are inconsistent with the provisions of this Order are hereby repealed.

7. *Effectivity.*—This Administrative order shall take effect upon its approval.

Issued in Quezon City, this 13th day of March, 1961.

CESAR M. FORTICH
*Secretary of Agriculture
and Natural Resources*

Recommended by:

HERACLIO R. MONTALBAN
Director of Fisheries

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Nominations submitted by the President to the Commission on Appointments for confirmation

May 17, 1961

Manuel Serrano as Foreign Affairs Officer, Class III, February 20, 1961.

Julio Calvo as Vice-Consul of the Republic of the Philippines, February 21, 1961.

Serafin Garcia as Foreign Affairs Officer, Class IV, February 25, 1961.

Manuel de Veyra as City Engineer of the City of Tacloban, March 1, 1961.

Annie Sand as member of the Board of Examiners for Nurses, March 2, 1961.

Raul I. Goco as Solicitor in the Office of the Solicitor General, March 3, 1961.

Limneo L. Platon as member of the National Planning Commission, March 22, 1961.

Fidel Mabuñga as Justice of the Peace of Madela, Nueva Vizcaya, April 7, 1961.

Guillermo Ababon as Chief of the Fire Department of the City of Gingoog, April 7, 1961.

Dr. Anacleto B. Coronel, as chairman, and Dr. Nicolas S. Sevilla and Dr. Felicísimo Agustín, as members, of the Veterinary Examining Board, April 7, 1961.

Simeon A. Reyes as member of the Home Financing Commission, April 7, 1961.

Dr. Demetrio Belmonte as City Health Officer of Manila, April 7, 1961.

The Chairman, National Economic Council, and the Chairman, Presidential Committee on Administration Performance Efficiency, as members ex officio of the Council of Administrative Management, April 7, 1961.

Gloria A. Amago, as chairman, and Teresita S. Binaday and Preciosa Irma P. Florentin, as members, of the Board of Examiners for Dietitians, April 7, 1961.

Elias L. Villaluna as Provincial Assessor Iloilo, April 7, 1961.

Gov. Jose L. Valera and Paterno Aquino as members of the Board of Directors of the Philippine Virginia Tobacco Administration, April 7, 1961.

Tirso Espeleta and Salvador Nobleza as members of the Board of Assessment Appeals of the Province of Iloilo, April 7, 1961.

Mariano Eugenio as Assistant Director of the Bureau of Printing, April 7, 1961.

Gaudencio Atendido as Register of Deeds of Nueva Ecija and Cabanatuan City, April 7, 1961.

Jesus Colmenares as member of the Board of Administrators of the Philippine Coconut Administration, April 7, 1961.

Hon. Cesar Bengzon as Chief Justice of the Supreme Court, April 10, 1961.

Hon. Felipe Natividad and Hon. Dionisio de Leon as associates Justices of the Supreme Court, April 10, 1961.

Jesus Iriarte as Deputy Auditor General, April 17, 1961.

Prospero B. Pichay as Provincial Treasurer of Surigao del Sur, April 19, 1961.

Juan T. Paqueo as Provincial Assessor of Surigao del Sur, April 19, 1961.

Dominador P. Rodriguez as Justice of the Peace of Albor, Surigao del Norte, April 19, 1961.

Carlo H. Lozada as Justice of the Peace of Placer, Surigao del Norte, April 19, 1961.

Fernando C. Silvosa as Justice of the Peace of Tandag, Surigao del Sur, April 19, 1961.

Hilario J. Santos as President of the Central Luzon Agricultural College, April 21, 1961.

Antonio R. Barredo and Avelino Santamaria as members of the Board of Directors of People's Homesite and Housing Corporation, April 21, 1961.

Soledad L. Dolor as member of the Board of Directors of the People's Homesite and Housing Corporation, May 2, 1961.

Cesar Vergel de Dios as chairman of the Board of Examiners for Architects, April 21, 1961.

Ruperto C. Gaité as member of the Board of Examiners for Architects, April 21, 1961.

Francisco Galicano as City Engineer of the City of Dumaguete, April 21, 1961.

Espiritu Quintans as members of the Rice and Corn Board, April 21, 1961.

Capt. Renato Barreto, PAF Reserve, as Colonel in the Reserve Force of the Philippine Air Force, AFP, April 26, 1961.

Major Justiniano S. Montano, as Colonel in the Reserve Force of the AFP, April 26, 1961.

Geronimo C. Ulep, as chairman, Januaryo Lagrosas, Magdaleno T. Camacho, Dr. Esmeraldo Roque, and Dr. Nicanor T. Aguillar, as members, of the Board of Assessment Appeals of the province of Lanao del Norte, April 26, 1961.

Gil Cagulada, as chairman, and Loreto Delgado and Marcela Durias, as members, of the Board of Assessment Appeals of Misamis Occidental, April 26, 1961.

Amando Butalid, as chairman, and Joaquin V. Faellar, Bonifacio Pecson, Eugenio Avila, Sr., and

Andres Evangelista, as members, of the Board of Assessment Appeals of the province of Leyte, April 26, 1961.

M. V. Celerian as chairman of the Board of Assessment Appeals of the Province of Zamboanga del Sur, April 26, 1961.

Esteban Q. Atienza as chairman of the Board of Assessment Appeals of Oriental Mindoro, April 26, 1961.

Jose D. de Guzman, as chairman, and Crispulo P. la Rosa, Juan M. Abas, Lizardo Malabanan, and Ricardo Mayuga, as members, of the Board of Assessment Appeals of the province of Batangas, April 26, 1961.

Amado Mabul as chairman of the Board of Assessment Appeals of the Province of Laguna, April 26, 1961.

Dionisio Q. Erfe as chairman of the Board of Assessment Appeals of Zamboanga del Norte, April 26, 1961.

Fernando C. Campilan, Jr., as Register of Deeds of Southern Leyte, April 26, 1961.

Ricardo T. Aguas as Register of Deeds of Pangasinan, April 26, 1961.

Rolando G. Alberto as Register of Deeds of Naga City, April 26, 1961.

Buat P. Alonto as Register of Deeds of Marawi City, April 26, 1961.

Cenon C. Laurena as member of the Board of Assessment Appeals of Laguna, April 26, 1961.

Amparo F. Rodil as member of the Board of Accountancy, April 27, 1961.

Bernardo Lloren Salas as Provincial Fiscal of Surigao del Sur, May 2, 1961.

Soledad L. Dolor as member of the Board of Directors of the People's Homesite and Housing Corporation, May 2, 1961.

Mauro Mendez as Envoy Extraordinary and Minister Plenipotentiary of the Republic of the Philippines, May 3, 1961.

Amancio L. Bauson as Justice of the Peace of Asingan, Pangasinan, May 3, 1961.

Inocencio Ventura as Justice of the Peace of San Miguel, Pangasinan, May 3, 1961.

Alfredo L. Yatco, Jr., as member of the Code Commission May 4, 1961.

Antonio H. Bautista as Justice of the Peace of Antequera, Bohol, May 4, 1961.

Jose S. Domantay as Assistant Director of Fisheries, May 5, 1961.

Enrique Magalona as full-time member of the Board of Governors of the Development Bank of the Philippines, May 5, 1961.

Rafael Macatangay as member of the Board of Directors of the Philippine Virginia Tobacco Administration, May 5, 1961.

Hon. Querube C. Makalintal, as Presiding Justice and Hon. Juan P. Enriquez, Gustavo F. Victoriano, Hon. Jose S. Rodriguez, Hon. Manuel M. Mejia, Hon. Julio Villamor, and Natividad Almeda Lopez as Associate Justices to the Court of Appeals, May 5, 1961.

Jose Almocera as Assistant Provincial Fiscal of Leyte, May 5, 1961.

Generoso F. Obusan as Justice of the Peace of Daet, Camarines Norte, May 5, 1961.

Roque S. Aquino as Sub-Provincial Assessor of the Sub-province of Siquijor, May 5, 1961.

Mrs. Celedonia M. Caballero as Councilor of the Municipality of Minglanilla, Cebu, May 9, 1961.

Bernabe Odero as Clerk of Court of Pangasinan, May 9, 1961.

Wilfredo Vega as Vice-Consul of the Republic of the Philippines, May 9, 1961.

Anatolio Sagario as Justice of the Peace of Kumalarang, Zamboanga del Sur, May 9, 1961.

Benjamin Rivera Sarmiento as Justice of the Peace of Alilem, Ilocos Sur, May 9, 1961.

Trinidad C. Cadacio as Justice of the Peace of Nagbukel, Ilocos Sur, May 9, 1961.

Francisco S. Cordero as Justice of the Peace of Palimbang, Cotabato, May 9, 1961.

Pelayo F. Llamas as Consul General of the Republic of the Philippines, May 9, 1961.

Aurelio Ramos as Consul of the Republic of the Philippines, May 9, 1961.

Hector V. Donato as Justice of the Peace of Natonin, Mt. Province, May 9, 1961.

Proceso P. Silangcruz as Clerk of Court of Cavite (Trece Martires) May 9, 1961.

Pempeyo S. Tiglao as Justice of the Peace of Banban, Tarlac, May 9, 1961.

Elisio M. Somera as Justice of the Peace of Santa Lucia, Ilocos Sur, May 9, 1961.

Leonardo Jimenez as Justice of the Peace of Aguilar, Pangasinan, May 9, 1961.

Luis D. Tolentino as Justice of the Peace of Dinas, Zamboanga del Sur, May 9, 1961.

Florante B. Padernal as Justice of the Peace of San Ildefonso, Ilocos Sur, May 9, 1961.

Pascualita P. Lavenko as Second Assistant Provincial Fiscal of Albay, May 9, 1961.

Luis Bonganay as Assistant Provincial Fiscal of Albay, May 9, 1961.

Jose Bagasao as City Engineer of the City of Cotabato, May 9, 1961.

Jose Samson as member of the Board of Directors of the Philippine Tobacco Administration, May 9, 1961.

Meliton Pajarillaga as Municipal Judge of the City of Cabanatuan, May 9, 1961.

Nicerio P. Sendaydiego as Provincial Treasurer of Pangasinan, May 9, 1961.

Gaudioso T. Cainglet as Justice of the Peace of Daus, Bohol, May 10, 1961.

Rafael Vasquez, Jr., as Justice of the Peace of Candoni, Negros Occidental, May 10, 1961.

Luis Hernandez as Chief of the Fire Department of the City of Toledo, May 10, 1961.

Romulo Abasolo as Auxiliary Justice of the Peace of San Gabriel, La Union, May 10, 1961.

Santiago Carlos as member of the Board of Directors of the Cebu Portland Cement Company, May 10, 1961.

Wenceslao M. Polo as Assistant Provincial Fiscal of Leyte, May 10, 1961.

Bartolome Aguirre as Councilor of the Municipality of Magarao, Camarines Sur, May 10, 1961.

HISTORICAL PAPERS AND DOCUMENTS

REMARKS OF PRESIDENT CARLOS P. GARCIA AT THE STATE DINNER
FOR VICE-PRESIDENT LYNDON B. JOHNSON, MAY 13TH AT
MALACANANG

MR. VICE PRESIDENT,
HIS ILLUSTRIOUS LADY,
YOUR EXCELLENCIES,
LADIES AND GENTLEMEN:

WE ARE singularly privileged to have with us the Vice-President of the United States of America. To you, your distinguished Lady, and the other members of your party, the Filipino people open their homes and their hearts to welcome you to our land and to wish you a happy sojourn in our country. Brief though it be, we regard your visit as momentous for the Philippines and the whole of Asia because by it you are spreading the new warm American message of courage and hope for the emerging and developing democracies in this part of the globe.

We are realizing the fact that the United States under the new, inspiring, and courageous leadership of President Kennedy is building the kind of strength in the United States which will be for the defense of freedom around the world. Filipinos hail the information that the new leadership in Washington wants a peace in which the funds now poured into the destructive forces of armaments may be channeled into the constructive results of disarmament—into a great multination effort to eradicate disease, harness rivers, eliminate illiteracy, and exploit the frontiers of space. We are gladdened to know that the United States wants to see the United Nations a truly effective body “working toward the establishment of a world-wide peace under law enforced by world-wide sanctions of justice.”

Above all, as far as Asians are concerned, we were assured under the new American leadership, that America still stands “for freedom and progress and the pursuit of peace,” which means that America must help the developing and newly emerging nations of the world to achieve the economic progress on which their political freedom depends. The American nation wants to be sure that these developing nations are strong and stable enough to resist the steady and ruthless infiltration of communist subversion. We were assured that the American people have decided to “demonstrate in this generation that economic growth and human liberty can evolve hand in hand” and that the present American administration proposes to do a big job to mobilize a joint, long-term program of assistance to underdeveloped areas within the Free World.”

Mr. Vice-President, we like to look, at your tour to the Philippines and Southeast Asia as a positive demonstration of the unwavering resolution of the American government and people to translate into living realities all these commitments of the USA to the emerging democracies in Asia. God knows that we who are your allies in Asia, who kept faith with you in war and in peace for the defense of freedom and democracy, no matter what the cost, we need to feel deep in our national consciousness the surge of renewed faith and cheer and courage generated by the reassuring hand and inspiring contact and communion with the Leader of the Free World—the United States of America.

Asia, occupying one-third of the earth's surface, and teeming with billions of people of varied races, color, and creed, constitutes the mightiest challenge to, and the supreme test of, America leadership for peace, democracy, and freedom. Destiny united the U.S. and the Philippines in heroic defense of freedom and democracy during the Second World War. Destiny will keep us ever united for the same sacrosanct cause.

May I now ask you, ladies and gentlemen, to join me in a toast to the continued good health of His Excellency, John Fitzgerald Kennedy, President of the United States of America, and to the peace, happiness, and prosperity of the American people.

RESPONSE OF U.S. VICE-PRESIDENT LYNDON B. JOHNSON TO THE
REMARKS OF PRESIDENT CARLOS P. GARCIA AT THE STATE
DINNER, MAY 13, 1961 AT MALACANANG

MRS. JOHNSON and I have been literally overwhelmed by the welcome that we have received here today. Filipino hospitality is well known the world over but the warmth and the sincerity of our reception has seemed to me to represent something more. It has been really a very personal reaffirmation of the deep and the abiding friendship that has long existed between our two governments, and even more truly between our peoples.

At the same time, it has been very gratifying proof that the Philippines continue to offer the wholehearted support which it has consistently accorded to my country in our efforts to provide effective leadership for the Free World in these hard post-war years.

I have come to the Philippines and I will travel in the days to come in other countries of Southeast Asia, to assure the peoples of this region of the readiness of President Kennedy and the new administration in the United States to continue to act as their partner, their ally, and their friend. I refer to our determination to contribute through technical aid, through development assistance to you, on long term defensive economic and social goals, both as individual nations and as a region with common aspirations and one facing common dangers. The Kennedy administration is fully aware of the dangers which confront the Philippines and the dangers that you are not separated by broad expanses of ocean from the terrors of communistic penetration. My country has on numerous occasions demonstrated its willingness to come to the aid of free peoples who threatened from without.

Back in the hill country in which I was reared in Texas, we have a saying that you have the kind of friend you are. And you have been our friends and we are your friends, and I can assure you tonight that we will continue to honor our obligations, and, if so asked, proceed either unilaterally or in concert with other allies to maintain the Free World position in Asia. In that free world position in Asia, the Philippines is a cornerstone which supports our faith and confidence in the future. The United States of America is proud, extremely proud, to stand side by side with your beloved country.

Ladies and gentlemen, this has been an unusual day for me, filled with honors and inspirations. I have met here in the house of a friend, true friends, and have discussed the problems that confront the Free World, two friends representing friendly lands. So I now have the honor to ask you to join with me in a toast to the health of His Excellency, Carlos P. Garcia, President of the Republic of the Philippines, and to the prosperity and betterment and wellbeing of the wonderful Filipino people.

PRESIDENT GARCIA'S SPEECH BEFORE THE THIRD LABOR-MANAGEMENT CONGRESS AT THE UE AUDITORIUM THURSDAY MORNING, MAY 11, 1961

CHAIRMAN DALUPAN,
SECRETARY CASTAÑO,
DISTINGUISHED GUESTS,
FRIENDS AND DELEGATES:

THE great drama of our times centers in the attempt to extend the human frontiers into boundless space; the world is a stage, and at this moment, there are but two performers on it, with the names of Gagarin and Shepard—the rest are spectators.

But that is only a metaphor. Neither Gagarin nor Shepard, neither the U. S. nor the Soviet Union, is the hero of this great drama; the hero is an abstract entity—the human spirit, the Daring One who, speaking through Faust, reproved the devil thus:

*“Poor devil! What have you to give?
Was any human spirit struggling to ascend
Such as your sort could ever comprehend?”*

The conquest of space is nothing but an extension of our attempts to master our environment. The spectacular for the moment dazzle us; but in the end we realize that a Gagarin or a Shepard flying into space, and a Juan de la Cruz building a great dam to modernize his primitive agriculture belong to the same genus of heroism.

In either case, it is the human spirit daring and conquering new frontiers. The entrepreneur founding a new industrial plant; the scholar delving into the obscure past for materials to illuminate the history of his people; even anyone who sets up in new business ventures—all these know the feeling of passing into, and overcoming a new frontier. For truly, the frontier is where you find it. It consists in self-surpassing. Every man is his own Gagarin or Shepard; as T. S. Eliott said it—

*“And so each venture
Is a new beginning, a raid on the inarticulate.”*

The frontier is where you find it. For the Filipino people, as we march past the middle of the 20th Century, the frontier lies much closer to earth than above it; it consists in the earthly task of economic development—setting up factories, modernizing farms, opening up new lands on the rims of jungles.

Earthly indeed this task seems to us; but in the perspective of history, it acquires a grandeur and a magnificence that even the conquest of space cannot rival. For what can be grander than the conquests of mass poverty, with its concomitants, disease and ignorance?

It is by means of economic development that the burden of poverty, the ancient curse of man, had been lifted from men's back in a significant area of the world—what we know as the West, thus extending to an unheard-of extent the areas of human freedom and human possibility. Unfortunately, the Western advance barely dragged the bulk of mankind after it. That is why a tremendous gap parts the world today between, on one hand, the developed countries—the prosperous one third of the world—and the underdeveloped countries, which make up the penurious two-thirds of mankind.

This gap can be expressed statistically in terms of incomes. Asians, Africans, and Latin Americans constitute 65 per cent of the world's population; and they produce only 17 per cent of the world's income. The remaining one third of the world, which we call the West, accounts for more than 80 per cent of the world's income.

The gap is indeed wide—and according to the United Nations estimates it is getting wider still. We know, however, that this is not gap in human intelligence, not a difference in the native capacities of the world's races; it is a gap in development. The Western countries underwent their industrial revolution more than two hundred years ago; and today it is our turn to have ours. But in the meantime, rather than politely wait for us to catch up, the West has already entered the threshold of a second industrial revolution powered by nuclear energy, and of which Gagarin and Shepard represent but the opening chapter.

But to catch up with the West is not right now the measure of our ambition as a people. We shall rejoice with them in their space and other scientific glories; we shall follow with vicarious pride the conquest of newer and farther frontiers by their Gagarins and Shepards. But the same human spirit that lobs a man into space and sends robots to the interstellar universe we shall employ to build factories, furnaces, and iron shops; build feeder roads, bridges, and wharves to connect our barrios and towns; install more schools, health clinics; and everywhere extend the frontiers of our economic and social development.

The frontiers of economic development, no less than the frontiers of space, require the sturdy, pioneering and heroic will of a Gagarin or a Shepard. Challenges may vary, but the quality of the human response, if it be heroic, is ever the same. What was Andres Bonifacio but a Gagarin of his own time, a mere worker who, with boloes and bamboo lances, launched the first nationalist revolution in the history of Asia? What was Mabini but a Gagarin of the intellectual and the moral worlds, conceiving and founding a modern republic fifty years ahead of his time? And Rizal? Rizal was a hundred times Gagarin. He spent his whole life

exploring and extending the frontiers of liberty, in an Asia darkened with timeless despotism.

The heroic spirit runs strong in the Filipino people; but it has known too many brilliant flashes for us to be convinced of its constancy. In its perverse form, this spirit assumes that shape of get-rich-quick schemers; but its most characteristic expression is the endless number of beginnings that we make,—whether civic, business, literary, or political projects—good, promising beginnings that never go farther.

We have matured enough as a people to be suspicious of sudden bursts of energy which, like the words we speak, perish in the very saying. The tasks of economic development will resist all our *ningas-kugon* enthusiasm. They call for large stretches of sustained effort, a patience and perseverance, a steady quality of the will for which, as a people, we are exactly noted.

We are all impatient to solve our problems, to abolish all the great ills of our society and lessen human suffering in our midst; and a President, it seems to me, cannot help being the most impatient of the whole lot. For more than most, he knows the gap between the ideal and the means to its attainment; the gap between his own dream for his people and the reality of their suffering.

Powerful as the President is, he must be prone to feelings of helplessness when he sees that his programs, excellent as they are, do not work as well and as quickly as a magic wand in realizing those transformations that he desires for his people. And no President is so bereft of soul and sensibility that his heart would not quicken at some modest success achieved here and there by the efforts of his people; thus, he does not begrudge himself the time spent in inaugurating a new strip of road, a factory or a mill, or a new hydroelectric plant.

Yet hard as we pray and hard as we reproach ourselves, the fact remains that in this business of economic development, there are no short cuts. No, there might be, but we shrink from the heavy cost of blood and lives that it entails—for this is the method of wholesale regimentation of the people by Communism. We even shrink from any prospects of more extensive government participation in business and industry, associating this in our minds with Socialism.

We have in fact elected to undertake our economic development along a path already suspect in a predominantly Socialist Asia. I mean that we have chosen to make private enterprise the mainstay of our economic development. The government is to create the climate, and private enterprise is to assume the major work of development, not the government itself. This is our policy. And as I have indicated, this is a lonely choice.

As to whether our system of private enterprise will prove a match for the socialist systems taking form in such countries as India, Indonesia, and Burma, as the basic instrument for economic development, we cannot exactly determine now. To a large extent, it is going to be you, Filipino labor and management, who will decide the answer to this question. The Government, of course, does not and will not disclaim its share of the responsibility. But in an economy of private enterprise, neither can you divorce yourselves, as free management and free labor, from the responsibility or success of our system.

Present trends from a purely pragmatic point of view give grounds to hope that we have chosen wisely. The highest rate of economic growth in Asia today, according to informed sources, is taking place not in the socialist economic but in the private-enterprise economies of Japan and the Philippines.

In the Philippines in particular, we have cause to be proud of the significant strides that have been attained here, mainly to the credit of Filipino management and the Filipino workers. The United Nations statistics established the Philippines as the fastest-growing economy in the ECAPE region, over a period of one decade.

Consider that our gross national product has registered a spectacular increase by ₱600 million in the year 1960 alone. This GNP for last year stood at ₱10.8 billion as against ₱10.2 billion in 1959.

Our agricultural crop yield last year rose by 3 per cent over the preceding year's level.

Our manufacturing production in 1960 scored a remarkable increase of 8.3 per cent, surpassing the previous peak level attained in 1959 which was 7.8 per cent.

In terms of electric power output, this rose by 80 per cent during the first nine months of 1960 over that of the corresponding period in 1959.

The impact of this economic development has created an estimated 810,000 new job opportunities, during only the two-year period from 1957 to 1959, according to the consciously conservative estimate of our statistical information services.

Statics, however, can only give us a sketchy picture. No amount of figures can give a fair and adequate representation of the great efforts that are being mustered by all sectors of our people to accelerate our economic development. I still think that, important as we all are over the rate of our program, we are right now chalking up a record in the rate of growth no other country in Asia can match at this time, save only our usual exception, Japan.

This achievement speaks highly of the caliber of Filipino management and Filipino labor. It speaks highly of all our

people, but especially those entrusted with the tasks of economic leadership, as we move forward across the frontiers of economic development to our vision of a modern, industrial Philippines, the same country that Jose Rizal saw and foretold in his prophetic essay, "The Philippines a Century Hence."

But that vision lies yet in the horizon, and we can but pause briefly from the tasks of hurdling the frontier to indulge in romanticizing the future. The Filipino's per capita income has increased remarkably in a few years to a new level estimated at close to P396. But this remains still far below the level of income in the developed countries; it still marks us only too closely as an underdeveloped country.

Under our Three-year Economic and Social Development Program effective until next year, it is the goal of our economic policy to raise this per capita income to the level of P417, not in monetary, but in real terms. I am confident that, studying present signs, we not only will attain this goal but actually surpass it.

But as I said, the long, tedious tasks of economic development will continue to require our unremitting effort and a steady will. We cannot rest content with any achievement today, no matter how impressive. We are winning the war against mass poverty, ignorance, and disease, but the enemy is stubborn, as one would expect of an entity as old as human history itself.

Though a team representing our nation's total productive force, Filipino labor and management will not escape the strain of many conflicts between them. But already it is a source of pride for many Filipinos that under the common impulse to make over this land into a better country, Filipinos on both sides of the industrial fence have so far successfully maintained a peaceful but dynamic relationship, which finds expression in voluntary cooperation and increasing productivity.

To this relatively mature attitude on the part of Filipino labor and management we must credit, I believe, a great part of our gains in economic development. It is an attitude remarkable in a country just now starting its own industrial revolution. And it is an attitude that is splendidly served by Labor-Management Congresses of this kind.

The heroes of this period of our history are those from the ranks of both labor and management who, by their imagination, skill, and spirit of enterprise are moulding here, on this ancient land, a modern nation; and who, in the process, are helping to conquer mass poverty and to lift Filipino humanity to a higher level of life.

Economic development—industrialization—modernization, especially in technology, these are the frontiers waiting to be conquered by the Filipino spirit and the Filipino will. That

spirit and that will work equally through labor and management, and indeed, through every one of us. With it let us fashion together a new country, where poverty is no longer festering wound, but a scar of history; where the good things of life made by honest human labor are in abundance, and are fairly shared; and where, unshackled from poverty and disease, the Filipino nation shall direct its heroic spirit to higher goals and newer frontiers of achievement.

Finally, the Space Age, which is already a reality, brings in revolutionary changes of undetermined magnitude. One thing is already certain and, that is, that change of technology will have to be at much faster velocity. For instance, in five or six years, the jet plane may have to be junked for planes five times as fast. Television broadcasting may be done from stellites so as to cover the whole world. Fuel light enough for interplanetary navigation is a vision near realization. The science of electronics is changing with amazing speed and so automation has become an irresistible reality that Labor-Management will have to face. The miracles in chemistry (we have particular interests in sucrochemistry because of our abundance of sugar is on the eve of revolutionizing or doing over practically all the industries. Only one invention or discovery in electronics, chemistry, or nuclear science may be sufficient to make obsolete what we are yet building now.

But the Space Age is a reality and we cannot live out of, or away from, it. We have to change our technology faster. We have to endow our science foundations for research in basic and applied sciences to unprecedented proportions. We have to change our educational system to endow it with a capacity to train and prepare all citizens for productive or creative enterprise—the only way to full employment of our educational system capable to produce technicians and technologists and workers versatile enough to change over their work or career three or four times in their lifetime. Our investment figures will have to rise from millions to billions. Yes, gentlemen, the Space Age ushers us into an area of undreamed of possibilities, of boundless opportunities, to achieve indivisible universal peace and happiness. I have faith that the Filipino management and labor will prove worthy of the 21st Century.

**AGREEMENT BETWEEN THE REPUBLIC
OF THE PHILIPPINES AND THE
REPUBLIC OF INDONESIA**

The Republic of the Philippines and the Republic of Indonesia, in furtherance of the friendly relations existing between them and desiring to conclude an Agreement providing for the treatment which shall be accorded the nationals of each Contracting Party who are illegally in the territory of the other, and establishing, on a reciprocal basis, a more expeditious and simplified system of control for the entry and exit of the nationals of each of the Contracting Parties living within the specified Border Area of such Contracting Party and intending to make visits of limited duration to the corresponding Border Area of the other Contracting Party, have designated for this purpose the undersigned Plenipotentiaries who, after communicating to each other their respective full powers, found in good and due form, have agreed as follows:

ARTICLE I

Except as hereinafter provided, each of the Contracting Parties shall repatriate its nationals who are now or may hereafter be found in the territory of the other after it shall have been determined by the competent authorities of the latter that such nationals of the Contracting Party concerned have entered illegally the territory of the other Contracting Party. This undertaking shall include all expenses for their subsistence and medical treatment while under detention, pending repatriation, which expenses shall accrue from the moment of notification of their detention in such place as may be designated by the Contracting Parties, and in returning them to their country.

ARTICLE II

In consideration of the undertaking of each Contracting Party provided in Article I the following classes of persons shall be exempt from the application of the said Article I upon legalization of their permanent residence status.

1. The nationals of each of the Contracting Parties who had illegally entered the territory of the other before January 1, 1946, and have continuously resided therein, including their minor children born in the said territory, provided that they are admissible and not subject to deportation under the laws of the Contracting Party in whose territory they are found, except for the fact that they had entered illegally.

2. The nationals of each of the Contracting Parties who entered illegally and who are residing illegally in the territory of the other and who, before January 1, 1954, had contracted valid marriage with the nationals of the Contracting Party

in whose territory they are residing as shown in official registry records.

ARTICLE III

Each of the Contracting Parties shall, at the date of this agreement, communicate to the other a binding official estimate of the number of nationals of the other Contracting Party illegally within its territory as of October 29, 1954. All illegal entries after October 29, 1954, shall be treated as future entries and shall be summarily repatriated under the provisions of Article I.

ARTICLE IV

Application for legalization of permanent residence under the provisions of subparagraphs 1 or 2 of Article II hereof must be filed in due form with the competent authorities of the Contracting Party concerned by the applicant within a period of three (3) months from the date this Agreement takes effect, extendible for another period not exceeding three (3) months upon the written request of either of the Contracting Parties; *Provided, however*, that any person failing to comply with the provisions of this Article shall be deemed illegally residing in the country where he is found and shall forthwith be repatriated under the provisions of Article I of this Agreement.

ARTICLE V

The nationals of each of the Contracting Parties claiming the privilege of legalizing their permanent residence on the basis of subparagraphs 1 or 2 of Article II of this Agreement must in every case present evidence that they fall under any of the two exempted class above-mentioned, satisfactory to the competent authorities of the Contracting Party within whose territory they reside, and subject, in case of appeal by the persons concerned to judicial review by its courts.

Each of the Contracting Parties shall charge for the legalization and alien registration under the provisions of this Article a fee of the equivalent in legal tender of fifty Philippine pesos for each person: *Provided, however*, that persons of 14 years of age or below shall be exempt from such charges; and *Provided, further*, that, in the case of Indonesian nationals, the Government of the Republic of Indonesia shall pay all amounts due under this Article to the Government of the Republic of the Philippines in two installments, the first of which shall be paid on the date this Agreement takes effect, and the second, within twelve months thereafter.

ARTICLE VI

The Contracting Parties agree to establish a system of border crossing control whereby nationals of each of the

Contracting Parties residing in the specified Border Area may freely enter into, and travel within, the corresponding Border Area of the other solely for purposes of business and/or visit of relatives and/or for religious worship and/or pleasure, subject to the laws and regulations existing therein, provided that they are bona fide holders of Border Crossing Cards which shall be issued by each of the Contracting Parties in accordance with the provisions of this Agreement.

ARTICLE VII

For purposes of this Agreement, the Border Areas are:
Philippines—

1. Balut-Sarangani Island Group
2. Sibutu Island Group
3. Simanul Island
4. Manuk Manka Island

Indonesia—

1. Taland-Sangi Island Group
2. Miangas Island Group
3. Kawio Island Group
4. Nunukan Island

ARTICLE VIII

Border Crossing Cards, valid for presentation within a period of thirty (30) days from date of issuance thereof and for a stay of not exceeding fifty-nine (59) days, may be issued upon payment of the equivalent in legal tender of the sum of ten Philippine pesos as service charge in any number of not more than six hundred (600) annually by the authorized border crossing authorities of each of the Contracting Parties to any national of the other Contracting Party, possessing all of the following qualifications:

1. The applicant must have resided in the specified Border Area for at least five years preceding the date of application;
2. The applicant must be otherwise admissible under the immigration laws of the Contracting Party within whose Border Area he intends to travel.

ARTICLE IX

Border Crossing Cards containing the English, Tagalog, and Indonesia texts shall be good only for single entry. Each card shall indicate the date and place of issue, and an adequate personal description of the holder, including his photograph, signature, and fingerprints, as well as the destination, purpose of travel to the Border Area, and the border crossing station through which entry and exit is to be effected.

ARTICLE X

Each of the Contracting Parties shall, after mutual consultations and consent, establish border crossing card-issuing stations in the Border Area of the other as well as border crossing entry and exit stations in its Border Area. In the same manner, the sites of such border crossing stations may be changed by the Contracting Parties.

ARTICLE XI

Each of the Contracting Parties shall repatriate in accordance with the provisions of this Agreement any of nationals to whom a Border Crossing Card has been issued violating any of the terms or conditions under which he was admitted into the territory of the other.

ARTICLE XII

The passport, visa, and immigration regulations in effect in the territory of each of the Contracting Parties shall be applicable to all other cases of travel not covered by the present Agreement.

ARTICLE XIII

This Agreement shall be in force for a period of five (5) years from the date of its effectivity. At the expiration of said period, the Agreement shall be subject to review by the Contracting Parties and may thereafter be modified, and/or extended, or abrogated.

ARTICLE XIV

This Agreement shall be effective upon the exchange of the instruments of ratification which shall take place in Manila.

IN FAITH WHEREOF, the Plenipotentiaries of the Contracting Parties have signed the present Agreement and have hereunto affixed their seals.

Done in duplicate in the English and Indonesian languages, of which the English text shall prevail in case of dispute, in Djakarta this 4th day of July in the year one thousand nine hundred fifty-six, *Anno Domini*.

For the Republic of
Indonesia:

For the Republic of the
Philippines:

SOEKARJO WIRJOPRANOTO
*Ambassador Extraordinary
and Plenipotentiary*

JOSE FUENTEBELLA
*Ambassador Extraordinary
and Plenipotentiary*

DECISIONS OF THE SUPREME COURT

[No. L-12407. May 29, 1959]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellant, *vs.*
FRANCISCO T. KOH, ET AL., defendants and appellees

1. CENTRAL BANK CIRCULARS; CIRCULAR No. 20; PROOF OF PRESIDENTIAL APPROVAL.—Besides the presumption of regularity of official transactions, there is a certification of the Executive Secretary that the President approved Central Bank Circular No. 20, which subjects to licensing by the Central Bank all transactions in gold and foreign exchange. That is enough. It would be superfluous to require the prosecution to further prove Presidential approval where the Circular itself says so.
2. ID.; ID.; ID.; CIRCULAR IMPLEMENTING CIRCULAR No. 20.—Circular No. 31 being a mere implementation of Circular No. 20 does not need Presidential sanction.
3. ID.; ID.; CONFLICT WITH INTERNATIONAL AGREEMENTS; BURDEN OF PROOF.—The Central Bank and the President certify that Circular No. 20 accords with all pertinent international agreements to which the Republic of the Philippines is a party. As to conflict, if any, between the Circular and the international agreements, the *onus probandi* rests with the defense.

APPEAL from an order of the Court of First Instance of Manila. Tan, J.

The facts are stated in the opinion of the Court.

Acting Solicitor General Guillermo E. Torres and Solicitor Camilo D. Quiason for the plaintiff and appellant.

Alberto R. de Joya and Francisco T. Koh for the defendants and appellees.

BENGZON, J.:

The above six defendants were charged before the Manila Court of First Instance with violation of Central Bank Circular Nos. 20 and 31 in connection with sec. 34 of Republic Act No. 265, which violation had been committed according to the information as follows:

"That on or about the 25th day of May 1953, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused being then the officers, directors, and/or stockholders of the Villanueva Steamship Company, Inc., a corporation duly organized, existing, and doing business under the laws of the Philippines, conspiring and confederating together and mutually helping one another, did then and there wilfully and unlawfully make material misrepresentations in an application to purchase foreign exchange filed with the Central Bank and in the other papers or documents required in accordance with the exchange control regulations issued by the same, among other things, to wit: the said accused made it appear that the Villanueva Steamship Company, Inc. was purchasing the vessel known as the "T. S. S. Jolly" from its alleged owner, the Kiau Hing Shipping Company of Hongkong, for the price of U. S. \$1,148,000, when in truth and in fact as all the accused well knew, the owner and seller of the

vessel to the Villanueva Steamship Company, Inc. was the Concordia Steamship Company of Hongkong, managed and operated by Wheelock, Marden & Co., Ltd. of Hongkong and that the vessel was actually worth and in fact was purchased by the Villanueva Steamship Company, Inc. for the amount of U. S. \$266,000, by virtue of which misrepresentations the Central Bank was led to grant, as in fact it granted, the Villanueva Steamship Company, Inc. an exchange license to remit abroad the total amount of U. S. \$1,148,000; that after the said exchange license had been granted as above described, the accused remitted abroad the total amount of U. S. \$1,148,000 of which amount only U. S. \$266,000 was paid to the Concordia Steamship Company, and in furtherance of their conspiracy, did and then and there wilfully and unlawfully utilize the balance of U. S. \$882,000 for other purposes and/or sell the same in the blackmarket, thereby defrauding the dollar reserves of the Republic of the Philippines in the total sum of U. S. \$882,000, to its great damage and prejudice."

Through their counsel, two defendants moved to quash on the grounds, first, that the facts set forth in the information did not constitute an offense, the Circulars allegedly violated being invalid; and second, because even if the Circulars were valid, the information charged two separate offenses.

After considering the arguments of both sides, the trial judge upheld the grounds stated in the motion; and finding that such grounds were also applicable to the other defendants, ordered the dismissal of the information. The prosecution appealed in due time.

In holding the Circulars to be invalid, His Honor said it was not shown they were approved by the President, nor that they were issued in accordance with executive and/or international agreements to which the Republic is a party. It should be stated in this connection that the Circulars were issued in pursuance of sec. 74 of Republic Act No. 265, which reads:

"SEC. 74. Emergency restrictions on exchange operations.—Notwithstanding the provisions of the third paragraph of the preceding section, in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, the Monetary Board, with concurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized in this section shall be subject to any executive and international agreements to which the Republic of the Philippines is a party."

Except for the two objections above listed, there is no question that Circular No. 20 complies with sec. 74. But as to the first objection, it is enough to point out that the Circular begins with this paragraph:

"1. Pursuant to the provisions of Republic Act No. 265 (Central Bank Act) the Monetary Board, by unanimous vote and with the

approval of the President of the Philippines, and in accordance with Executive and International Agreements to which the Republic of the Philippines is a party, hereby restricts sales of exchange by the Central Bank and subjects all transactions in gold and foreign exchange to licensing by the Central Bank."

Besides the presumption of regularity of official transactions, there is a certification of the Executive Secretary that the President approved Circular No. 20. That is enough. It would be superfluous to require the prosecution to further prove Presidential approval where the Circular itself says so, and is published in the Official Gazette which, by the way, is printed under the supervision of Malacañan.

Circular No. 31 being a mere implementation of Circular No. 20 does not need Presidential sanction.¹

As to the international aspect, it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding on our Government. The Central Bank and the President certify that it accords therewith, and it is presumed that said officials knew whereof they spoke, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the Circular and our international commitments.

Executive regulations are valid only when they are not contrary (they are subject) to the laws and the Constitution. Yet none would think of requiring the Fiscal to prove that this rule or Circular does not conflict with the Constitution or the laws. The *onus probandi* rests with defendants.

Appellees' counsel have quoted here some provisions of the International Monetary Fund Agreement. But none of them may be interpreted to prohibit the action taken by our Central Bank. In fact, there are of record, the annual reports of the International Monetary Fund of April 30, 1950 and 1951, commenting on the exchange controls of the Philippines without any criticism or opposition.

We are quoted in this connection the following provision in the Agreement between the Philippines and the United States concerning Trade and Related Matters:

"The value of Philippine Currency in relation with the United States dollar shall not be changed, and the convertibility of Philippine pesos in United States dollars shall not be suspended, and *no restriction shall be imposed on the transfer of funds from the Philippines to the United States except by agreement with the President of the United States.*" (Italics ours)

But there is an official statement of the American Embassy in Manila wherein it is said that the United States "would concur" in the adoption of such temporary meas-

¹ People vs. Henderson III, et al., L-10829, May 1959.

ures (exchange controls) by the Philippine Government as might be deemed appropriate for safeguarding the dollar reserves of the Philippines. From the tenor of the statement, one could conclude that the U. S. Government did not object to, even approved the imposition of dollar exchange restrictions.

We are, therefore, constrained to uphold Circulars Nos. 20 and 31 of the Central Bank. In fact, we enforced in *People v. Jolliffe*² and *In People v. Henderson et al.*³

The trial judge perceived two offenses described in the information: (a) violation of sec. 6 and (b) violation of section 7, Central Bank Circular No. 31. Defendants made the false representation that the vessel had been purchased from Kian Hing Shipping Co. for \$1,148,000.00 whereas in truth as all of them knew, the vessel had been bought from Concordia Steamship Co. for the amount of \$266,000.00 only. This is the first violation; the second, consisted in their having used, of the dollars allocated for the purchase of a ship, \$882,000.00 for purposes other than such acquisition and/or for sale "in the black market".

Undoubtedly, there are two offenses. Indeed the prosecution so admits; albeit both may be charged, so it contends, in one information, because the first was a necessary means to commit the other. In our view, this position may not be successfully maintained. Even if the ship had not been overpriced, the dollar allocation for its purchase could have been destined to other transactions, in violation of section 7 of Circular No. 37.

Needless to add, section 34 of Republic Act No. 265 fixes the penalty for such violations.

Wherefore, sustaining the order of dismissal on account of duplicity, we hereby direct the return of the record so that the People may amend its information, or present two separate informations as the circumstances may warrant.⁴

Parás, C. J., Montemayor, Bautista Angelo, Labrador, Concepción, and Endencia, JJ., concur.

Reyes, A., J., in the result.

Order sustained.

² L-9553, May 13, 1959.

³ May 1959.

⁴ Sections 7 and 8, Rule 113.

[L-11719. April 29, 1959]

THE COMMISSIONER OF CUSTOMS, petitioner, *vs.* AU YONG
HIAN (HONG WHUA HANG), respondent

1. PRESIDENT; CABINET; POWER ON VALIDITY OF LICENSE ISSUED BY IMPORT CONTROL COMMISSION.—The Cabinet may under Section 2 of Republic Act 650 pass on the validity of any license that may be issued by the Import Control Commission subject to such action as may be taken by the President, and it is only the latter on appeal who can determine the validity of any license that may be issued by the Import Control Commission.
2. ID.; MAY ACT THRU THE CABINET; LIMITATION OF THE LATTER'S POWER.—The President can act through his Cabinet and the acts of the latter may be considered as those of the former unless they are disapproved. But while the Cabinet acting for the President, can pass on the validity of a license issued by the Import Control Commission, that power cannot be arbitrarily exercised. The action must be founded on good ground or reason and must not be capricious or whimsical.
3. LICENSE; IMPORTATION; CANCELLATION AFTER SHIPMENT.—If it appears that a license issued to an importer to import certain goods is cancelled on the only ground that it does not bear any expiry date even if the importation had already been made and the shipment had already reached the port of Manila, the power of cancellation by the Cabinet would be improperly exercised. Had the license been cancelled on that ground before the importation had been effected, the same may be justified, for indeed a license as a rule must be limited in point of time, but not when the importation has been accomplished and the importer had made commitments with the dealer and assumed other obligations incident thereto.

REVIEW of a decision of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

Solicitor General Ambrosio Padilla and *Solicitor Felicísimo R. Rosete* for the petitioner and appellant.

Eduardo D. Gutierrez for the respondent and appellee.

BAUTISTA ANGELO, J.:

On June 12, 1953, respondent was issued by the Import Control Commission License No. 16679 giving him authority to import goods under "no dollar remittance basis." On the strength of said license, he effected the importation of old newspapers in four shipments: the first in July, 1953, the second in September, 1953, the third in May, 1954 and the fourth in November, 1954. The last shipment arrived in Manila on November 7, 1954 and the same was seized by the customs authorities on the ground that the importation was made without the license required by Central Bank Circular No. 45. While the seizure case was pending before the Collector of Customs, the President of the Philippines, acting through

his Cabinet, in a meeting held on January 26, 1955, cancelled the aforesaid License No. 16679 on the ground that it was illegally issued "in that no fixed date of expiration is stipulated."

After considering the case relative to the seizure of the shipment, the Collector of Customs found that the same was not covered by a valid license as required by Central Bank Circular No. 45 and, consequently, he decreed its forfeiture to the Government. Not satisfied with this decision, respondent appealed to the Commissioner of Customs, who affirmed the decision of the Collector of Customs. In due time, respondent appealed to the Court of Tax Appeals by filing a petition for review. The Court of Tax Appeals, after due hearing, rendered decision reversing the decision of the Commissioner of Customs and ordering the cancellation of the surety bond filed in substitution of the shipment. This is an appeal from said decision.

It appears that the shipment in question was imported by respondent on the strength of Import License No. 16679 issued by the Import Control Commission on June 12, 1953 under Republic Act No. 650. The shipment arrived in Manila on November 7, 1954 and immediately was seized by the customs authorities on the ground that it is not covered by a license as required by Central Bank Circular No. 45. It also appears that after said shipment arrived in Manila and while the seizure case was pending investigation by the Commissioner of Customs, the Cabinet in a meeting held on January 26, 1955, cancelled the aforesaid license on the only ground that "no fixed date of expiration is stipulated therein." The issue now to be determined is, is this cancellation justified?

It is not disputed that the Cabinet may be under the law pass on the validity of any license that may be issued by the Import Control Commission subject to such action as may be taken by the President. This is clearly inferred from Section 2, Republic Act No. 650 which provides that the import license therein authorized shall be issued by the President through any instrumentality he may choose to assist him in carrying out the provisions of said Act and that such instrumentality can question the validity of the license so issued, the only limitation being that the same may be appealed to the President. In other words, it is only the President, on appeal, who can determine the validity of any license that may be issued by the import Control Commission. It may also be admitted that the President can act through his Cabinet and that the acts of the latter may be considered

as those of the former unless they are disapproved.¹ But while the Cabinet, acting for the President, can pass on the validity of a license issued by the Import Control Commission, that power cannot be arbitrarily exercised. The action must be founded on good ground or reason and must not be capricious or whimsical. This principle is so clear to require further elaboration.

Was this power properly exercised in the instant case? The answer must of necessity be in the negative, for it appears that the license issued to respondent to import the shipment in question was cancelled on the only ground that it does not bear any expiry date even if the importation had already been made and the shipment had already reached the port of Manila. Had the license been cancelled on that ground before the importation had been effected, the same may be justified, for indeed a license as a rule must be limited in point of time, but not when the importation has been accomplished and the importer had made commitments with the dealer and assumed other obligations incident thereto. In fact, if the cancellation were to prevail, the importer would stand to lose the license fee he paid amounting to P12,000.00, plus the value of the shipment amounting to P21,820.00. This is grossly inequitable. Moreover, "it has been held in a great number of cases that a permit or license may not arbitrarily be revoked * * * where, on the faith of it, the owner has incurred material expense."²

It has also been held that "where the license has acted under the license in good faith, and has incurred expense in the execution of it, by making valuable improvements or otherwise, it is regarded in equity as an executed contract and substantially an easement, the revocation of which would be a fraud on the licensee, and therefore the licensor is estopped to revoke it, * * *. It has also been held that the license cannot be revoked without reimbursing the licensee for his expenditures or otherwise placing him in status quo." (53 C. J. S., 816-817)

Having reached the conclusion that the license of respondent has been improperly cancelled, there is no need for him to obtain another license under Central Bank Cir-

¹ Villena vs. Secretary of Interior, 67 Phil., 451, 453; Marc Donnelly & Associates, Inc. vs. Agregado, et al., G. R. No. L-4510, May 31, 1954.

² Francis Dainese vs. The Board of Public Works of the District of Columbia, 91 U. S., 580, 23 L. ed. 251; Pratt vs. City and County of Denver, et al., 209 P. 508; Williams vs. Smith, 230 P. 395; See also Williams vs. Smith, 238 P. 40; City of Lowell vs. Amadee Archambault, 1 L. R. A. (NS) 458; Lerch vs. City of Duluth, 92 N. W. 1116; City of Buffalo vs. Chadeayne, 31 N. E. 442; Dobbins vs. City of Los Angeles, 49 L. ed., 169.

cular No. 45. Consequently, the seizure of said shipment is unjustified.

WHEREFORE, the decision appealed from is affirmed, without costs.

Parás, C. J., Padilla, Montemayor, Reyes, A., Labrador, and Endencia, JJ., concur.

Bengzon, J., in the result.

Decision affirmed.

[No. L-13032. August 31, 1959.]

PHILIPPINE AMERICAN DRUG COMPANY, petitioner, *vs.* COLLECTOR OF INTERNAL REVENUE and COURT OF TAX APPEALS, respondents.

1. TAXATION; SALES TAX ON IMPORTED ARTICLES; ALL CHARGES NECESSARY TO COMPLETE IMPORTATION TO BE INCLUDED IN THE ASSESSMENT.—In the assessment of the advance sales tax on imported articles, Section 183-(B) of the National Internal Revenue Code requires that there be included in the assessment not only the import invoice value of the merchandise, including freight, postage, insurance, commission, and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported. The intention of the law is to include all charges, whether specified or otherwise, which an importer has to pay to complete his importation.
2. ID.; ID.; ID.; BANK PREMIUM ON DOLLAR PURCHASED FORMS PART OF LANDED COST.—While under the Parity Exchange Law (Republic Act No. 77) the legal rate of exchange is ₱2.00 for every U.S. dollar and that this rate has always been maintained by the government through various proclamations of the President of the Philippines, however, the existence of such legal rate does not preclude the government from including in the landed cost the difference paid by the importer in the purchase of foreign exchange if such difference has actually been paid in carrying out the importation. The importer could have paid the legal rate in purchasing the foreign exchange but if he chooses to pay a different rate he should declare the difference for that goes to increase the cost in completing the importation.
3. ID.; UNDERASSESSMENT; GOVERNMENT NOT FOUND BY MISTAKES OF ITS AGENT.—If in assessing income tax (or other kinds of tax) upon the return of the taxpayer, an error is made with the result that the tax is underassessed, the Collector has the power to reassess and collect any additional tax upon the returns for said years, even after the death of the taxpayer. The Government is not estopped by error or mistake on the part of its agents (*Pineda vs. Court of First Instance of Tayabas, et al.*, 52 Phil. 803).
4. STATUTORY CONSTRUCTION; "EJUSDEM GENERIS"; DOCTRINE WHEN APPLICABLE.—The doctrine of *ejusdem generis* is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (*State vs. Prather*, 21 L.R.A. 23, 25).

REVIEW of a decision of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

José F. Ochoa for the petitioner.

Assistant Solicitor General José P. Alejandro and
Attorney Alejandro B. Afurong for the respondent.

BARRERA, J.:

Based on a stipulation of facts submitted by the parties, Philippine American Drug Co., petitioner, and the Collector of Internal Revenue, respondent, in CTA Case No. 265, the pertinent portions of which are quoted hereunder:

"2. That during the period from February 14, 1951 to December 31, 1954, petitioner did not for purposes of computing the advance sales tax on its importations include as part of the landed cost the difference (P.015) between the amount actually paid by it to the bank on said importations computed at the rate of P0.015 for every U.S. dollar and the value of the imported goods computed at the legal rate of P2.00 for every U.S. dollar;

3. That the difference of P0.015 represents the premium on the dollar charged by the bank and paid by the petitioner in the purchase of foreign exchange;

4. That in November 4, 1955, respondent demanded from petitioner (Demand No. 13756) the payment of the sum of P10,243.13 as deficiency advance sales tax, * * *;

* * * * *

9. That the only question involved in this case is whether or not the difference of P0.015, representing the premium on the dollar charged by the bank to the importer-petitioner and paid by it in the purchase of foreign exchange (U.S. dollar), should form part of the landed cost of the imported articles for purposes of computing the advance sales tax, assuming that respondent's ruling dated June 21, 1954, as quoted in the 5th paragraph hereof, was issued in accordance with law and reflects the correct interpretation thereof;

* * * * *

the Court of Tax Appeals rendered judgment in said case upholding the validity of the decision of the Collector of Internal Revenue imposing sales tax on the bank premium of P0.015 for every U.S. dollar purchased by the petitioner Philippine American Drug Co. required for its importations from February 14, 1951, to December 31, 1954, which tax, together with the surcharges thereon, amounted to P10,243.13. Hence, this appeal by the taxpayer.

In demanding collection of the disputed assessment, the respondent Collector of Internal Revenue invokes Section 183-(B), as amended of the National Internal Revenue Code which provides:

SEC. 183. Payment of percentage.—

* * * * *

(B) *Sales tax on imported articles.* When the articles are imported, the percentage taxes established in section one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from custom's custody, based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred *per centum* of such total value in the case of articles enumerated in section one hundred

and eighty-four; fifty *per centum* of such total value in the case of articles enumerated in section one hundred and eighty-five; and twenty-five *per centum* in the case of articles enumerated in section one hundred and eighty-six. * * *

The questions presented herein actually revolve around the nature or characteristic of the above-mentioned bank premium, that is, whether said bank charge falls under the category of the charges enumerated in Art. 183-(B) of the Tax Code as included in the taxable value of imported goods and, therefore, must be declared for tax purposes. This case is not one of first impression to this Court, because in our decision in the case of Genato Commercial Corporation *vs.* The Court of Tax Appeals, et al., G.R. No. L-11727, promulgated September 29, 1958, the same issue was resolved, thus:

As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight postage, insurance Commission, Customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of merchandise, which includes freight, postage, insurance, commission, and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of P0.015 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment *all charges, whether specified or otherwise*, which an importer has to pay to complete his importation.

Invoking the rule of *ejusdem generis* which provides that "where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated," petitioner contends that the difference of P0.015 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.

With this we disagree, for it cannot be denied that the intention of the law is to include *all charges* that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of *ejusdem generis* is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (*State vs. Prather*, 21 LRA 23, 25).

But it is contended that, even assuming that the difference of P0.015 paid by petitioner be considered as a proper charge to be included in the assessment of the advance sales tax, still the same can no longer be included for that purpose for the same should be deemed as covered and absorbed by the corresponding mark-up prescribed by law. This contention is erroneous as being contrary to the clear import of the law. Thus, the law requires that the importer should pay the advance sales tax based on the import invoice value of the merchandise, including those charges therein enumerated, "plus one hundred *per centum* of such total value in the case of articles enumerated in section one hundred and eighty-four; fifty *per centum* in case of articles enumerated in section one hundred and eighty-five; and twenty-five *per centum* in the case of articles enumerated in section one hundred and eighty-six." In other words, the mark-up prescribed by law is to be considered *in addition* to the invoice value and all incidental expenses of importation.

There is no dispute that in the Parity Exchange Law (Republic Act No. 77) the legal rate of exchange is P2.00 for every U.S. dollar and that this rate has always been maintained by the government through various proclamations of the President of the Philippines, but the existence of such legal rate does not preclude the government from including in the landed cost the difference paid by the importer in the purchase of foreign exchange if such difference has actually been paid in carrying out the importation. The importer could have paid the legal rate in purchasing the foreign exchange but if he chooses to pay a different rate he should declare the difference for that goes to increase the cost in completing the importation.

* * * * *

As an additional argument not urged in the Genato case, appellant herein cites the change in the wording of the law as an indication of the intention of Congress to limit the meaning of the phrase "all similar charges." Before Section 183-(B) of the National Internal Revenue Code was first amended by Republic Act 594 on February 16, 1951, it provided that the tax was imposed on imported articles "based on the total value thereof at the time they are received by the importer, including freight, postage, insurance, commission, customs duty, and all similar charges." Republic Act No. 594 amended the section so that the tax on imported articles shall be "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." Ascribing undue import to this amendment, counsel for appellant argues: "Though we might concede that the term 'total value' in the provision just quoted could be interpreted to include the premiums that banks charged the importers for opening letters of credit, we cannot subscribe to the proposition suggested by the Court of Tax Appeals that the term 'import invoice value', which Republic Act 594 introduced in lieu of the term 'total value', can be so interpreted. For to admit the correctness of said pro-

position is to entirely render meaningless the deletion of the term 'total value' and the insertion in its stead of the term 'import invoice value' accomplished by Republic Act 594."

The inference sought to be drawn by appellant from this change in the law is unjustified. Whether we interpret the phrase "all similar charges" as component part of and therefore already included in "the total value thereof", as appellant seems to accept, or we merely *add* "all similar charges" as a separate item to "the import invoice value thereof", as the present law provides, the result will be the same: the tax is to be based upon the total landed cost of the imported articles, as pointed out in the Genato case.

Appellant herein further assails the legality of the assessment because, it is claimed, retroactive effect is being given to the ruling of the Collector of June 21, 1954 which is void for lack of approval by the Secretary of Finance, and is made to apply to transactions long closed in the books of the taxpayer. We find no merit in this contention. As the Court of Tax Appeals has rightly said "The validity or invalidity of the ruling of respondent of June 21, 1954 is not material to this case. What is material here is the correctness of respondent's decision of November 4, 1955, which is the decision appealed from. (See par. 3, Petition for Review.) Even if the ruling of June 21, 1954 is invalid for lack of approval of the Secretary of Finance, upon which we do not here express an opinion, it would not affect the correctness of the decision of November 4, 1955, which we have found to be in accordance with Section 183-(B) of the Revenue Code."

As to the claim that transaction long closed in the books of the taxpayer can no longer be examined for the purpose of making a reassessment, suffice it to say that the underassessment of the total landed value of the imported merchandise was brought about by the importer's failure to add to the aforesaid landed value the premium collected by the bank on foreign exchange transactions. Hence, the same remained undetected until later when, in connection with its claim for credit for overpaid sales tax, the taxpayer's record was investigated. Moreover, even granting *arguendo* that the tax agents' inability to make the correct assessment reflected against their efficiency or ability, such fact alone does not preclude the Government from effecting a corrected assessment upon discovery of the error. As this Court has explicitly ruled:

If in assessing income tax (or other kinds of tax) upon the return of the taxpayer, an error is made with the result that the tax is

underassessed, the Collector has the power to reassess and collect any additional tax upon the returns for said years, even after the death of the taxpayer. The Government is not estopped by error or mistake on the part of its agents (*Pineda vs. Court of First Instance of Tayabas, et al.*, 52 Phil. 803).

This is of course understood to be without prejudice to the defense of prescription in appropriate cases.

WHEREFORE, the decision of the Court of Tax Appeals being in accordance with the evidence and the applicable law, the same is hereby affirmed, with costs against the appellant.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepción, and Endencia, JJ., concur.

Decision affirmed.

[No. L-11803. September 23, 1959]

IN THE MATTER OF the petition of Chan Lai to be admitted a citizen of the Philippines. CHAN LAI, petitioner and appellee, *vs.* REPUBLIC OF THE PHILIPPINES, oppositor and appellant.

1. CITIZENSHIP; NATURALIZATION; ENROLLMENT OF APPLICANT'S CHILDREN IN PHILIPPINE SCHOOLS; REQUIREMENT MANDATORY.—The requirement under the Revised Naturalization Law, Commonwealth Act 473, as amended by Commonwealth Act 535, regarding the schooling of a petitioner's children, is prescribed not only for petitioner's exemption from filing a declaration of intention but also as one of the qualifications to become a citizen. Where four of petitioner's children have always resided in China, and, therefore, have never attended school in the Philippines, there is failure to comply with the requirement. That it was impossible for the applicant to comply with this requirement due to financial difficulties or due to the strictness of the immigration authorities is not a valid excuse. The requirement is mandatory and non-compliance therewith is fatal to the petition for naturalization.
2. *Id.*; *Id.*; *Id.*; ENROLLMENT REQUIREMENT UNQUALIFIED.—The contention that the schooling requirement applies only to children who are minors and of school age at the time of naturalization, so that it would no longer apply to a petitioner whose four children who were left in China are now of majority age, married and emancipated, is untenable. The law expressly requires the applicant to enroll his minor children of school age in schools recognized by the Philippine Government during the entire period of residence required of him.

APPEAL from a judgment of the Court of First Instance of Manila. Santiago, *J.*

The facts are stated in the opinion of the Court.

Teófilo Mendoza for the petitioner and appellee.

Solicitor General Ambrosio Padilla and *Assistant Solicitor General Antonio A. Torres* for the oppositor and appellant.

GUTIÉRREZ DAVID, *J.*:

This is an appeal taken by the Government from a decree granting appellee's petition for admission to Philippine citizenship.

The record discloses that on April 2, 1955, a Chinese named Chan Lai filed with the Court of First Instance of Manila a petition for naturalization. After the first hearing, the Solicitor General moved for the dismissal of the case, alleging that petitioner had not filed a declaration of intention and, therefore, the court had no jurisdiction to entertain the petition. Later, however, the motion to dismiss was denied, and the petitioner was ordered to continue with the presentation of his evidence.

Petitioner was able to establish that he immigrated to the Philippines in 1923; that since then he has been continuously residing in this country, except for some visits

to China in 1927, 1931, 1934 and 1946; that he speaks and writes English and Tagalog; that he is engaged in the shoe business and has an annual net income of about P5,000; that he believes in the principles underlying the Philippine Constitution and has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relations with the constituted Government as well as with the community in which he lives; that he has mingled socially with the Filipinos and has evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos; that he is not opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposed to organized government; that he is not defending or teaching the necessity or propriety of violence, personal assault and assassination for the success and predominance of men's ideas; and that he is not a believer in the practice of polygamy and the has never been convicted of any crime involving moral turpitude.

It appears that during his first visit to China, petitioner married a Chinese woman named Yao Dian Ty, with whom he has five children, namely, Siok Lou, Kim Tong, Siok Kim, Eng Kong and Eng Kiong, all of whom were born in China in the years 1932, 1934, 1935, 1936 and 1947, respectively. In December, 1954, petitioner's wife and youngest child came to the Philippines as temporary visitors. During their stay, petitioner enrolled his child in an Anglo-Chinese School, but the schooling did not last long, for after a year, both wife and child were ordered by the immigration authorities to leave the islands. During the trial of the case, however, they were here again on a temporary visa.

Finding the said Chan Lai qualified to become a Filipino citizen, the lower court, after trial, granted his petition for naturalization.

The Solicitor General has appealed praying for the dismissal of the petition for the reason that petitioner had not filed a declaration of intention and that he had not sent his minor children to our local schools.

The Revised Naturalization Law (sec. 5, Com. Act 473) requires as a condition precedent to the consideration of any petition for naturalization that petitioner file a declaration of intention with the Solicitor General at least one year prior to the institution of the proceedings. The requirement is dispensed with, however, where the applicant has resided continuously in the Philippines for at least 30 years before the filing of the application, provided that the applicant has given primary and secondary education to all his children in the public schools or in

private schools recognized by the Government and not limited to any race or nationality (sec. 6, Com. Act 473, as amended by Com. Act 535). The same law also provides:

"SEC. 2. Qualifications. —Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

"Sixth. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen."

* * * * *

It is clear from the above that the children's schooling requirement is prescribed not only for petitioner's exemption from filing a declaration of intention but also as one of the qualifications to become a citizen. In the case at bar, it would appear that four of appellee's children have always resided in China and, therefore, never went to school in the Philippines. Obviously, petitioner-appellee failed to comply with the said requirement.

The petitioner-appellee claims to be exempt from compliance with the requirement because, according to him, it has been impossible. He declared that he had long wanted to bring his family to the Philippines but could not do so due to financial difficulties; and that as soon as he was capable of supporting his family he tried to bring it here but was prevented by the last war and the immigration authorities. This explanation given by petitioner-appellee is not satisfactory. It should be remembered that the quota system of the Bureau of Immigration became effective only in 1940 and before that time—during which petitioner-appellee made some trips to China—he could have easily secured entrance of his family to this country. What appears is that it was only since 1952 that he had tried to do so. In fact, the only tangible proof of his efforts to comply with the requirement is a letter to the Secretary of Foreign Affairs dated January 11, 1956, that is, about a year after he instituted these proceedings, requesting entrance of his wife and children as temporary visitors. The request, apparently, was not granted as to the four elder children. The lower court's statement that the immigration authorities denied petitioner-appellee's application for his family's entry to the Philippines "for no valid reason" should be rejected, for there is always the presumption that official duties have been regularly performed.

There is nothing to petitioner-appellee's pretense that in earlier years he could not afford to bring his family

here. First of all, this is belied by his own testimony that in 1937 he was already a store owner. Furthermore, in the case of *Tan Hi vs. Republic*, G. R. No. L-3354, January 25, 1951, this Court did not consider as valid excuse for non-compliance with the children's education requirement the fact that applicant could not finance the return of his minor children to the Philippines, in addition to the strictness of the Philippine Immigration authorities.

As to the claim that the requirement applies only to children who are minors and of school age at the time of naturalization so that it would no longer apply to petitioner-appellee since his four children who were left in China are now of majority age, married and emancipated, the provision of law clearly and expressly requires the applicant to enrol his minor children of school age in our recognized local schools "during the entire period of residence required of him" (*Dy Chan Tiao vs. Republic*, G. R. No. L-6630, August 31, 1954; *Quing Ku Chay vs. Republic*, G. R. No. L-5477, April 12, 1954; *Ng Sin vs. Republic*, G. R. No. L-7590, September 20, 1955). Indeed, it could not be denied that within the period of residence in the Philippines required of petitioner-appellee, all his children have been minors and of school age but that only the youngest was given education in the Philippines.

It has been held time and again that compliance with the requirement above referred to is mandatory and that non-compliance therewith is fatal to the petition for naturalization (*Chua vs. Republic*, G. R. No. L-6269, March 30, 1954; *Quing Ku Chay vs. Republic*, *supra*; *Tan vs. Republic*, G. R. No. L-5663, April 30, 1954; *Manzano Dy Chan Tiao vs. Republic*, G. R. No. L-6630, August 31, 1954; *Chua Kang vs. Republic*, G. R. No. L-8875, July 31, 1956; *Yu Hiang vs. Republic*, G. R. No. L-8387, March 23, 1956; *Lim vs. Republic*, G. R. No. L-9999, Dec. 24, 1957).

IN VIEW OF THE FOREGOING, the decision appealed from is reversed and the petition for naturalization denied. Without costs.

Parás, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepción, Endencia, and Barrera, JJ., concur.

Judgment reversed.

DECISIONS OF THE COURT OF APPEALS

[Nos. 15906-R and 15907-R. September 20, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ANTONIO PABARLAN *alias* "Tawisi", EUGENIO LIPO-
RADA *alias* "Geniong Visaya", and DOMINADOR LIPO-
RADA *alias* "Doming", accused and appellants.

1. CRIMINAL PROCEDURE; DOUBLE JEOPARDY; REVIVAL OF CASE AFTER DISMISSAL.—When, notwithstanding an arraignment of the accused upon a valid information filed in a court of competent jurisdiction and the plea of not guilty entered by him, and the dismissal of the case over his objection, the case is reinstated and the information therein filed revived, and the trial court proceeded with the trial of the case on said revived information and after such trial the accused is convicted of the crime therein charged, said accused's constitutional right not to be placed for the second time in jeopardy of punishment for the same offense is violated and his conviction is error.
2. CRIMINAL LAW; CONSPIRACY; SIMULTANEOUS ACTS.—The commission of simultaneous acts of aggression does not of itself demonstrate, in the absence of proof of a series of circumstances consistent with each other and with defendant's guilt and inconsistent with his innocence, concurrence of wills nor unity of purpose of action. *U. S. vs. Magcomot*, 13 Phil., 386; *People vs. Ibañez*, 44 Off. Gaz. 30.

APPEAL from a judgment of the Court of First Instance of Laguna. Alikpala, J.

The facts are stated in the opinion of the Court.

Restituto Luna & Romeo Luna, for accused and appellant Antonio Pabarlan.

Sulficio U. Tapia, for accused and appellants Eugenio Liporada and Dominador Liporada.

Assistant Solicitor General Pacifico P. de Castro and *Solicitor Pedro Ocampo*, for plaintiff and appellee.

NATIVIDAD, J.:

The above-entitled cases, docketed in the Court of First Instance of Laguna as Criminal cases Nos. 15782 and 15783, respectively, were heard jointly by agreement of the parties. The defendants, Antonio Pabarlan, Eugenio Liporada and Dominador Liporada were charged, in Criminal Case No. 15782, with the crime of homicide for the death of Ponciano Domingo, and in Criminal Case No. 15783, with that of frustrated homicide for the injuries received by Daniel de Torres. After trial, the lower court rendered a joint judgment, wherein it found all the defendants guilty beyond reasonable doubt as principals of the crimes charged, and sentenced them, in Criminal Case No. 15782, to an indeterminate penalty ranging from six (6) years

and one (1) day of *prisión mayor* to fourteen (14) years, eight (8) months and one (1) day of *reclusión temporal*, to indemnify, jointly and severally, the heirs of the deceased Ponciano Domingo in the sum of ₱6,000.00, and in Criminal Case No. 15783, to an indeterminate penalty of one (1) year and one (1) day of *prisión correccional* to eight (8) years and one (1) day of *prisión mayor*, to indemnify, jointly and severally, Daniel de Torres in the sum of ₱200.00, and each to pay the proportionate part of the costs of the proceedings, on the following findings:

"A group of six persons coming from Lipa riding in a jeep went to Calamba in the evening of January 21, 1953 to dance in a 'cabaret' in said municipality. Ponciano Domingo and Daniel de Torres, policemen of Lipa, were with that party but they were in civilian clothes and without their service pistols.

"Upon arriving in the 'cabaret' situated near the highway crossing leading to Manila outside of the town proper of Calamba, Daniel de Torres inquired for 'Toñing', a local policeman. He was informed that the party he was looking for was in the gambling house of the accused Eugenio Liporada situated not far from the cabaret. Daniel de Torres, Ponciano Domingo, Carlos Maulion and another proceeded to the house of said accused, leaving their other companions in the cabaret.

"'Toñing' was not at the time in the house of Eugenio Liporada where 'monte' was being played. Ponciano Domingo and Carlos Maulion then took part in the game, losing in the first bet but winning in the second an amount very much more than what they lost in the first. The 'dealer' did not like to continue with the game and so Ponciano Domingo offered to be the dealer, which was rejected. The other 'monte' players apparently resented the stoppage of the game and tried to get hold of the money of Ponciano Domingo and Carlos Maulion placed on the gambling table in front of them, which included their winnings. Ponciano Domingo asked the accused Eugenio Liporada, as owner and manager of the gambling house, to maintain order and prevent 'trouble' to ensue. Eugenio Liporada, however, shouted to his companions to take advantage of the situation to kill Ponciano Domingo and his companions, whereupon Antonio Pabarlan and Dominador Liporada opened their 'balisong' knives.

"Eugenio Liporada suddenly held from behind the two arms of Ponciano Domingo as Antonio Pabarlan stabbed him several times while Dominador Liporada similarly assaulted Daniel de Torres.

"The two victims were taken to an hospital in Calamba for first aid treatment but were later brought to the Philippine General Hospital in Manila. Ponciano Domingo died a few hours after arrival while Daniel de Torres was confined in said hospital for twenty-one days. For a month after his discharge from the hospital, Daniel de Torres was under medical treatment of Dr. Lacdao, spending on that account for medicine alone the sum of ₱65, as he was not charged by the physician for his fees. For the entire duration of the treatment, Daniel de Torres was not able to engage in his customary labor for which he used to be paid a compensation at the rate of ₱80 a month."

From this judgment, the defendants appealed.

The appellants, thru their respective counsel, filed two separate briefs, in which several assignments of error

are made. All the questions therein raised, however, center around two main propositions, to wit:

First, Whether or not the trial court erred in denying appellant Antonio Pabarlan's motion to quash the amended informations filed in these cases; and

Second, Whether or not the trial court erred in finding all the appellants guilty as principals of the crimes of homicide and frustrated homicide as charged.

1. Counsel contends under the first proposition that the revival over his opposition of the amended informations under which appellant Antonio Pabarlan was tried and convicted of the crimes at bar placed him twice in jeopardy of punishment for the same offenses, and consequently, the trial court should have sustained the latter's plea of double jeopardy, and quashed said informations in so far as said appellant is concerned.

The Solicitor General counters that there was in these cases no such revival of informations but simply correction of a clerical error.

Upon the facts, we find counsel's contention well founded. The records disclose that the present cases were initiated by two complaints filed with the justice of the peace court of Calamba, Laguna, on January 27, 1953, charging appellant Antonio Pabarlan and two unidentified persons, in one of them, with the crime of homicide, and in the other, with that of frustrated homicide. After the necessary preliminary investigation, the two cases were elevated to the Court of First Instance of Laguna, where they were docketed as Criminal Cases Nos. 15782 and 15783, respectively, of that court. In due time, the Provincial Fiscal of Laguna filed in said cases two informations. The information filed in Criminal Case No. 15782 charged Antonio Pabarlan with the crime of homicide, which was made to consist in that said defendant, in conspiracy with John Doe and Peter Doe who were still at large, unlawfully, feloniously and without any jurisdiction attacked Ponciano Domingo with a knife, causing on said Ponciano Domingo stab wounds in different parts of his body which caused his death. That filed in Criminal Case No. 15783, charged defendant Antonio Pabarlan with the crime of frustrated homicide, also made to consist in that said defendant, conspiring together with John Doe and Peter Doe who were still at large, unlawfully attacked and assaulted without any justifiable motives Daniel de Torres with a knife, causing in different parts of the latter's body wounds which, however, did not cause his death because of timely medical attendance. Defendant Antonio Pabarlan was arraigned on March 12, 1953, on said informations, and he entered the plea of "not guilty" to both charges.

John Doe and Peter Doe, the unidentified co-accused of defendant Antonio Pabarlan, were later on arrested and identified as Eugenio Liporada and Dominador Liporada, respectively. Accordingly, amended complaints were filed with the justice of the peace court of Calamba, Laguna, charging them and Antonio Pabarlan with the crime of homicide and frustrated homicide, and a reinvestigation of the cases was had. After such reinvestigation, the cases were again elevated to the Court of First Instance of Laguna. Instead, however, of filing the papers of the reinvestigation with the original records of Criminal Cases Nos. 15782 and 15783, the Clerk of Court treated said reinvestigation papers as independent cases and docketed them as Criminal Cases Nos. 15822 and 15823 of that court.

Subsequent to the receipt of the records of the reinvestigation, the Provincial Fiscal amended the informations filed in Criminal Cases Nos. 15782 and 15783 by only substituting therein the names of Eugenio Liporada and Dominador Liporada for those of John Doe and Peter Doe, respectively, and on May 19, 1953, he filed in Criminal Cases Nos. 15822 and 15823 a motion for the admission of the amended informations and for the dismissal of said criminal cases. Counsel for appellant Antonio Pabarlan opposed this motion. The trial court, in an order dated June 15, 1953, accepted the amended informations as filed in Criminal Cases Nos. 15822 and 15823, and dismissed Criminal Cases Nos. 15782 and 15783, with costs *de officio*.

Notified of this order, counsel for appellant Antonio Pabarlan filed in Criminal Cases Nos. 15822 and 15823 a motion to quash the amended informations therein filed, on the ground that the same placed said appellant twice in jeopardy of punishment for the same offenses. The Provincial Fiscal countered with a petition asking that the court's order be amended so as to state that the cases dismissed were Criminal Cases Nos. 15822 and 15823, as such was the intention of the prosecution. Acting on counsel's motion and the petition of the Provincial Fiscal, on July 20, 1953, the trial court issued another order which decreed that the amended informations erroneously accepted as filed in Criminal Cases Nos. 15822 and 15823 was admitted as filed in Criminal Cases Nos. 15782 and 15783 and ordered that the same be attached to the records of the latter cases, and that Criminal Cases Nos. 15822 and 15823 were dismissed. Counsel for appellant Antonio Pabarlan moved for a reconsideration of this order, but his motion was denied. Later, said counsel filed a motion to quash the said informations in so far as Antonio Pabarlan was concerned, on the ground that said appellant was being placed twice in jeopardy of punishment for the same of-

fenses. This motion was likewise denied by the trial court in its order dated February 4, 1954.

There can be no question as to the legality of the action of the Provincial Fiscal in amending the informations in question. The amendments introduced therein consisted only of substituting the true names of the co-accused of appellant Antonio Pabarlan for the fictitious names therein alleged and it is clear that they are unsubstantial amendments which could be introduced in said informations without violating any of the constitutional rights of said appellant. But, it cannot be disputed that after appellant Antonio Pabarlan was arraigned on the original informations filed in Criminal Cases Nos. 15782 and 15783, he was already in jeopardy of punishment for the offenses therein charged, and that since then he has come under the protection of the rule against double jeopardy. *People vs. Ylagan*, 58 Phil., 851. When said cases, therefore, were dismissed, he had the right, in the words of the Supreme Court, to "either rest assured that he will not be further molested, or prepare himself for the presentation of a new complaint" (*Julia vs. Sotto*, 2 Phil., 247, 253), or, for that matter, prepare for a revival of the informations already dismissed. And when, notwithstanding such arraignment and plea and dismissal, the dismissed cases were, over the objection of appellant Antonio Pabarlan, reinstated and the informations therein filed revived, and the trial court proceeded with the trial of the cases on said information which resulted in said appellant's conviction of the crimes therein charged, such proceedings clearly prejudice said appellant's constitutional right not to be placed for the second time in jeopardy of punishment for the same offenses.

The dismissal of cases Nos. 15782 and 15783 instead of Criminal Cases Nos. 15822 and 15823 as intended by the Provincial Fiscal was clearly a mistake. The trial court, however, was not wholly to blame therefor. A reading of the Provincial Fiscal's petition discloses that it was not free of vagueness. But, whoever may be the party to blame for the error, it is clear that it is not mere clerical error of no consequence. It is an error of procedure prejudicial to the substantial rights of the accused which constitutes ground for reversal. *Conde vs. Judge of First Instance and Fiscal of Tayabas*, 45 Phil., 173.

We, therefore, hold that the proceedings had in the instant cases in the court below violated the constitutional right of appellant Antonio Pabarlan not to "be twice put in jeopardy of punishment for the same offenses." Consequently, the informations filed therein should have been quashed in so far as said appellant is concerned.

2. It is contended under the second proposition that the trial court erred in finding the appellants guilty as principals of the crimes at bar. Counsel claims that the evidence does not prove beyond reasonable doubt that said appellants were the aggressors of the offended parties and that they conspired to commit the aggression.

The issue raised is one of fact. The evidence of the prosecution on the point tends to show that after Ponciano Domingo and Carlos Maulion had won in the game of *monte* then being played in the house of Eugenio Liporada, the dealer refused to proceed with the game; that thereupon Ponciano Domingo stated that he would act as banker; that one of the players objected to this proposal and insisted that the game be stopped; that all of a sudden the players started to grab the money of Ponciano Domingo and his companions then on the gambling table; that Ponciano Domingo called on Eugenio Liporada to maintain order, but the latter, instead of heeding the request, shouted at his companions to attack; that a fracas took place among the people present in the room, in the course of which Antonio Pabarlan and Dominador Liporada stabbed with knives Ponciano Domingo, while the latter was being held by Liporada by the hands from behind, and Dominador Liporada stabbed Daniel de Torres when the latter came to the aid of Ponciano Domingo; that as a result of these aggressions Ponciano Domingo sustained five wounds in different parts of his body, of which he died in the same night, and Daniel de Torres received three wounds also in different parts of his body, for which he was hospitalized for twenty-one days and further underwent thereafter medical treatment for one month, spending ₱65.00 for medicine and losing his salary during the period at the rate of ₱80.00 a month.

Appellant Antonio Pabarlan admitted having stabbed the deceased Ponciano Domingo on the night in question. He, however, claimed that he acted in self-defense. He stated that the offended parties and their companions took part in the game of *monte* then being played in the house of Eugenio Liporada; that in the course of the game Ponciano Domingo placed a bet on a card against that on which he had placed his bet; that when the card on which he had bet won, Daniel de Torres picked up both bets, his and that of Ponciano Domingo, and placed them as bet on another card; that when he asked for his winnings, Daniel de Torres boxed him and stated that that was the payment; that he returned the blow; that at this instant Ponciano Domingo shouted at Daniel de Torres to step aside as he would take care of him (Antonio Pabarlan) and drew his pistol; that upon seeing that Ponciano Domingo had drawn his pistol, he drew his balisong and stab-

ed with it Ponciano Domingo; that after stabbing Ponciano Domingo he jumped out of the window and ran away, and that while he was running away from the house he heard two shots. Eugenio Liporada corroborated this version of Antonio Pabarlan, but denied having held Ponciano Domingo by the hands from behind while Antonio Pabarlan was stabbing him as claimed by the witnesses for the prosecution. He testified that when he failed to pacify the people who were quarrelling, he stepped into the room of the house where a son of his of tender age was to protect him; that while inside the room he heard two shots; that after the commotion in the *sala* of the house had subsided he went out, and he found Daniel de Torres leaning on the wall with both hands placed on his belly and asking that he be brought to a hospital; that he approached Daniel de Torres and helped him go downstairs, but before they were able to take him to a hospital a policeman relieved him of Daniel de Torres. Dominador Liporada likewise corroborated the version of Antonio Pabarlan. He likewise denied the charge that he stabbed Ponciano Domingo and Daniel de Torres in the manner testified to by the witnesses for the prosecution, and stated that when during the commotion he made a move to help his brother Eugenio Liporada ward off a man who was trying to get near Antonio Pabarlan, his brother told him not to intervene; that because of this advice which was seconded by his sister who was holding him by the hand he repaired to a room of the house; that while he was inside that room he heard two shots, and that after the commotion was over he left the house.

There is, therefore, no dispute as to the fact that the offended parties, Ponciano Domingo and Daniel de Torres, were assaulted in the night of January 21, 1953, in the house of appellant Eugenio Liporada in Calamba, Laguna; that as a result of that assault Ponciano Domingo received five wounds in different parts of his body of which he died that same night, and Daniel de Torres suffered three injuries also in different parts of his body for which he was hospitalized for twenty-one days and underwent further medical treatment after hospitalization for one month, having spent ₱65.00 for medicine and lost during said period his income of ₱80.00 a month. It is especially established by the evidence that the injuries received by Ponciano Domingo that caused his death was inflicted upon him by appellant Antonio Pabarlan and that the latter was criminally responsible therefor. Antonio Pabarlan admitted in his testimony that he dealt said deceased several blows with his balisong on the night in question, and his claim that in inflicting said injuries he acted in self-defense is clearly untenable. We, however, entertain serious doubts

as to the alleged participation of appellants Eugenio Liporada and Dominador Liporada in that assault. It is true that the witness Carlos Maulion testified that both Antonio Pabarlan and Dominador Liporada stabbed Ponciano Domingo while the latter was being held by the hands from behind by Eugenio Liporada. The testimony, however, of this witness on this point is contradicted and denied by Dominador Liporada and Eugenio Liporada, and when it is considered that said testimony is not corroborated by any other evidence of record and is further enervated by the fact that in his affidavit executed before Sgt. Tolentino of the Philippine Constabulary who investigated the incident, he failed to mention Dominador Liporada as one of the assailants of the deceased (Exh. 2), and by the testimony of Daniel de Torres to the effect that when he came to the aid of Ponciano Domingo at the time the latter was being attacked and he was stabbed by Dominador Liporada, Eugenio Liporada was trying to prevent him from coming near Ponciano Domingo and was pushing him to the wall, a situation which render improbable the fact that Eugenio Liporada could be holding Ponciano Domingo by the hands from behind, there is every reason to doubt the veracity of the witness Maulion on the point. With regard to the injuries received by offended party Daniel de Torres, the evidence is also clear that they were inflicted by appellant Dominador Liporada. Said offended party testified that when he saw Ponciano Domingo being assaulted, he came to the latter's aid, but that he was intercepted by Eugenio Liporada who tried to prevent him from getting near Ponciano Domingo and attempted to push him to the wall, and that while he was being thus pushed to the wall by Eugenio Liporada, Dominador Liporada stabbed him several times with a knife. The testimony of Daniel de Torres on this point is corroborated by that of Carlos Maulion, and the mere denial thereof by appellant Dominador Liporada, which finds no positive corroboration in the other evidence of record except the testimony of his brother Eugenio Liporada who, it can be assumed, is unreliable, is insufficient to destroy the charge.

Upon the facts, therefore, we find that the injuries received by Ponciano Domingo which caused his death were inflicted by appellant Antonio Pabarlan, and that the injuries received by Daniel de Torres for which he was hospitalized for twenty-one days and underwent further medical treatment for one month were caused by appellant Dominador Liporada, and that these appellants are criminally responsible for said crimes. But, we further find that appellant Eugenio Liporada's participation in the crimes at the bar has not been clearly established by the evidence. We are further of the opinion that Antonio

Pabarlan and Dominador Liporada's criminal responsibility for said crimes is individual and not collective. The finding of the trial court that there was conspiracy in this case does not find clear support from the evidence. The appellants could not have conspired to commit the crimes at bar. There is no showing that they had previous knowledge of the offended parties' coming to take part in the *monte* being played in the house of Eugenio Liporada. The commotion that culminated in the aggression at bar was accidental. It is true that the acts of aggression were practically simultaneous; but the commission of simultaneous acts cannot of itself demonstrate concurrence of wills nor unity of purpose of action. To warrant such inference there must be proof of a series of circumstances, consistent with each other and with defendant's guilt and inconsistent with his innocence. *U. S. vs. Magcomot*, 13 Phil., 386; *People vs. Ybañez*, 44 O.G., 30. Such circumstances are not present in the instant cases.

Summarizing, we hold that the injuries received by the deceased Ponciano Domingo which caused his death, as charged in Criminal Case No. 15782, were inflicted by appellant Antonio Pabarlan, and that said acts constitute the crime of homicide as found by the trial court. Because, however, of the erroneous proceedings had in these cases to which we have adverted to in the discussion of the first proposition, said appellant is entitled to the benefits of the plea of double jeopardy and he cannot be convicted of said crime. Appellants Eugenio Liporada and Dominador Liporada cannot also be convicted of that crime; for, aside from the fact that, as above stated, it cannot be held that there was conspiracy among the appellants to commit the crimes at bar and, consequently, their criminal responsibility was individual and not collective, the evidence does not establish beyond a reasonable doubt their participation in its commission. As regards the injuries received by Daniel de Torres which are the subject-matter of Criminal Case No. 15783, it is clear that they were inflicted by appellant Dominador Liporada, and that the acts committed by the latter constitute the crime of frustrated homicide. Said injuries would have produced the death of Daniel de Torres had the latter not received timely medical attendance. The conviction of this appellant of said crime by the trial court is consequently warranted. Appellants Antonio Pabarlan and Eugenio Liporada cannot however be held responsible for said crime, the former, because, aside from the fact that he is entitled, as already stated, to the benefits of the rule against double jeopardy, he can not, due to the absence of conspiracy, be held solidarily liable for the acts of Dominador Liporada in which he did not materially participate, and Eugenio Liporada, because

it is not clearly established that he participated in the material execution of the incriminating acts and also because of the absence of proof of conspiracy between him and his co-appellants to commit the crime.

WHEREFORE, the judgment appealed from is modified, and another is hereby entered:

(a) In Criminal Case CA.-G. R. No. 15906-R (Criminal Case No. 15782, of the Court of First Instance of Laguna), acquitting appellants Antonio Pabarlan, Eugenio Liporada and Dominador Liporada of the crime of homicide therein charged, the first, or Antonio Pabarlan, on the ground of double jeopardy, and the last two, or Eugenio Liporada and Dominador Liporada, on the ground of reasonable doubt, with the costs in both instances *de officio*; and

(b) In Criminal Case CA.-G. R. No. 15907-R (Criminal Case No. 15783, of the Court of First Instance of Laguna), convicting appellant Dominador Liporada as principal of the crime of frustrated homicide and sentencing him to suffer an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of *prisión correccional*, as minimum, to eight (8) years and one (1) day of *prisión mayor*, as maximum, to indemnify Daniel de Torres in the sum of ₱145.00 as damages, and to pay the proportionate part of the costs in both instances. Appellants Antonio Pabarlan and Eugenio Liporada are acquitted of the charge of frustrated homicide filed in this case, the former, or Antonio Pabarlan, on the ground of double jeopardy, and the latter, or Eugenio Liporada, on the ground of reasonable doubt, with the proportionate parts of the costs in both instances *de officio*.

IT IS SO ORDERED.

Angeles and Amparo JJ., concur.

Judgment modified

[No. 24477-R. August 30, 1960]

GAUDENCIO PALOMO and VICENTA PALOMO, plaintiffs and appellees, *vs.* DOROTEO DILAG, defendant and appellant.

1. FORCIBLE ENTRY AND DETAINER; EJECTMENT; JURISDICTION OF MUNICIPAL COURT.—In order to confer jurisdiction to the municipal court in forcible entry and detainer cases the complaint should be filed within one year from the time the possession became unlawful, otherwise, the case will fall within the original and exclusive jurisdiction of the Court of First Instance. Since cases of this nature require demand as an indispensable element, the one-year period determinative of the court's jurisdiction should be counted from the time actual demand was made upon the defendant to vacate the premises.
2. *Id.*; *Id.*; EXPROPRIATION; SUSPENSION OF EJECTMENT PROCEEDINGS.—Suspension of an ejectment case on the ground that there is a pending expropriation proceeding involving the subject land could only be invoked where the acquisition thereof by the tenants thru the expropriation proceeding is possible but not where the possibility of expropriating the same is remote or is made to depend upon a contingency.

APPEAL from a judgment of the Court of First Instance of Manila. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

Augusto S. Francisco and *Antonio B. Alcera*, for defendant and appellant.

Prospero A. Crescini, for plaintiffs and appellees.

PEÑA, *J.*:

In an ejectment case that was filed on April 26, 1957, in the Municipal Court of Manila against the defendant, plaintiffs sought to recover possession of the parcels of land described in paragraph one of the complaint, containing a total area of 9,720.00 square meters, situated in Valencia Street, Sta. Mesa, Manila, which the latter claimed to have purchased from the Philippine National Bank on April 13, 1956 (Exh. "A"), and which portions thereof were occupied by the former who, however, refused to deliver its possession to the plaintiffs, despite the formal notification of the bank advising him of the sale and transfer of the said properties in favor of the plaintiffs (Exh. B), and notwithstanding plaintiffs' repeated demands, the last of which was on August 21, 1956, to vacate the premises in question.

In answer to plaintiffs' complaint, defendant denied its material averments, claiming, among other things, by way of special defenses that he had been leasing the premises in question from the former owner, the Philippine National Bank, in consideration of a monthly rental of ₱1.00 for a period of ten years and as such he had constructed his house on the premises leased with the consent and approval of the Bank. Defendant further alleged that he had already petitioned the Land Tenure Administration,

together with more than fifty petitioners who are likewise the tenants of the lands in question, to expropriate said lands under Republic Act No. 1599. He therefore, prayed for the dismissal of plaintiffs' complaint or in the alternative to suspend the proceedings for at least two years in accordance with section 5 of Republic No. 1599, until after the expropriation proceedings has been started.

At the hearing of the case the opposing parties represented by their respective counsels agreed on a stipulation of facts, on the basis of which the municipal court rendered its decision the dispositive portion is as follows—

"WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendant ordering the latter to vacate the premises, subject of this complaint; to pay the plaintiffs monthly rental of ₱1.00 from August 21, 1956 until the defendant shall have fully vacated the premises; the sum of ₱50.00 as attorney's fees and to pay the cost. The counterclaim is hereby dismissed. The motion for suspension of proceedings is also denied."

Not satisfied with the decision, the defendant appealed to the Court of First Instance of Manila and manifested to adopt his answer in the Municipal Court as his answer to plaintiffs' complaint in his appeal.

In the meantime, defendant filed a "motion to suspend proceedings" on January 8, 1958, invoking the provision of sections 1, 3 and 5 of Republic Act No. 1162 as amended by Republic Act No. 1599, to which an opposition was duly filed by the plaintiffs. Acting upon said motion, the Court below sustained the defendant contention in its decision dated April 30, 1958, and ordered the proceedings suspended for a period of two years from the date of the filing of the complaint, that is from April 26, 1957 up to April 26, 1959.

Consequently, plaintiffs filed a "motion for reconsideration and new trial" of the aforesaid decision on the ground of newly discovered evidence, alleging that the Solicitor General, who under the law is empowered to institute expropriation proceedings or landed estates, had declined to initiate expropriation proceedings of the parcels of lands in question (Exh. F). Finding the motion to be meritorious, the Court granted the same and set the case for trial on June 9, 1958. However, on the schedule date of the trial, only plaintiffs appeared, who was consequently allowed to present the newly discovered evidence, Exhibit "F". Thereafter, decision was rendered on July 10, 1958, setting aside the previous decision dated April 30, 1958 and another one entered the dispositive portion of which is as follows—

"IN VIEW WHEREOF, judgment is rendered condemning defendant to vacate the premises; to pay plaintiff the sum of ₱1.00 a month from August 21, 1956 (par. 7, Stipulation), to pay plaintiff the sum of ₱200.00 as attorney's fees and to pay the costs."

As according to the defendant, he was not notified of the date of the hearing of the case for new trial which was set on June 9, 1958, he filed a "motion for reconsideration, which motion was accordingly granted after finding the same to be well founded. Thus, the decision which was rendered on July 10, 1958, was reconsidered and once more the case was set for hearing on August 13, 1958. It is the contention of the defendant that it is not the Solicitor General who must decide whether or not to institute expropriation proceedings under Republic Act No. 1162 as amended by Republic Act No. 1599 and finally amended by Republic Act 1999. After due trial, decision was rendered affirming its previous decision on July 10, 1958, condemning once more the defendant to vacate the premises; to pay the plaintiffs the sum of ₱1.00 a month from August 21, 1956, and the further sum of ₱200.00 as attorney's fees plus the costs of the suit.

Still not yet satisfied with the aforesaid decision, defendant comes now before us by way of appeal and assails the the trial court—

1. In failing to dismiss the case for lack of original jurisdiction thereover by the Municipal Court;
2. In not suspending ejectment proceedings against the defendant for two years or until April 30, 1960, and in otherwise reopening the trial of the case and rendering judgment therein for defendant to vacate;
3. In failing to fix a reasonable period of lease;
3. In ordering the restoration of possession to the plaintiff-appellee despite prior possession of defendant-appellant.

Appellant's claim that the municipal court had no jurisdiction over the case as plaintiffs' complaint was filed beyond the reglementary period of one year. For according to him, inasmuch as plaintiffs purchased the land in question on April 23, 1956, and that defendant has been unlawfully occupying a portion of said premises as squatter and against the will of the Philippine National Bank from which plaintiffs had purchased the same, defendant's character of unlawful possession of the land commenced from the date of acquisition. It was maintained, therefore, that since the complaint was filed only on April 26, 1957, against the defendant, the period of one year had already elapsed, a circumstance, according to appellant, that removed this case from the original jurisdiction of the municipal court, for said case partakes already of an *accion publiciana* which should properly belong within the original and exclusive jurisdiction of the Court of First Instance. This contention is gratuitous. To begin with, appellant himself admitted in his answer that he was notified by the Philippine National Bank relative to the purchase of the land by the plaintiffs on May 3, 1956, as well as plaintiffs' latest demand to vacate the premises which was tendered against

the defendant on August 21, 1956. Therefore, and since cases of this nature requires demand as an indispensable element, to confer jurisdiction to the court to hear and decide an ejectment case, the one year period should be counted from the time plaintiffs had tendered the same on August 21, 1956, up to the filing of the complaint on April 26, 1957. (*Gonzales vs. Salas*, 49, Phil. 1; *Dorado vs. Virna*, 34 Phil. 264), the duration of which covers only a period of 8 months and five days. Obviously, plaintiffs complaint was perfectly filed within the reglementary period.

We could not see any justification why the trial court had to suspend the ejectment proceedings against the defendant considering that the Solicitor General who, under section 2 of Republic Act 1990 which is the latest amendment to Republic Acts Nos. 1162 and 1599, is empowered to institute the necessary expropriation proceedings before a competent court, had already declined to initiate the expropriation proceedings for plaintiff's land (Exh. F) as the same does not fall within the purview of landed estate provided in Section 4, Article XIII of the Constitution. We are of the opinion and so hold that appellant could only invoke the suspension of the proceedings when the land sought to be expropriated is possible in such a manner that the tenant will eventually acquire the land, but certainly not under the circumstance where the possibility of expropriating the same is remote or dependent upon contingent event. To hold otherwise, the law would be too whimsical, capricious and arbitrary, thereby enabling the tenant to shield himself and take refuge behind the law to the damage and prejudice of the land owner. Obviously, this is not the purpose and intentment of the law for which it was enacted. Indeed, plaintiffs' land consisting of two lots with a total area of 9,702.20 square meters sought to be expropriated could not be considered as a landed estate within the meaning of the constitution and in the light of the ruling of the Supreme Court which has repeatedly held in construing and interpreting the phrase "landed estates with extensive areas" that land involving an area of 67 hectares (*Republic vs. Baylosis, et al.*, C.R. No. L-6191, prom. Jan. 31, 1955), or where the area involving 22,665 square meters; 10,564 square meters; 49,553 square meters and 39,374 square meters were all not landed estates and, therefore, cannot be the subject of expropriation proceedings (*Guido vs. Rural Progress Administration*, G.R. No. L-2080, Oct. 31, 1949; *Com. vs. Borja*, G.R. No. L-1496, Nov. 26, 1949, *Republic vs. Leon Samia, et al.*, G.R. No. L-3900, July 18, 1951; *Mun. of Caloocan vs. Manotoc Realty, Inc., et al.*, G.R. No. L-6444, May 11, 1954).

Anent the third assignment of error, it is significant to state in this connection that Article 1687 of the New Civil Code presupposes of the existence of a lease contract but the period of which has not been fixed between the contracting parties. In such a case, the court may fix the term of the lease. In the instant case, however, there was never any contract of lease of the premises in question between the plaintiffs and the defendant, for when the former acquired the aforesaid lands from the Philippine National Bank, the latter was already occupying the premises who refused to surrender its possession upon plaintiffs' demand to vacate the same. Therefore, since a contract of lease is a bilateral one which necessitates the meeting of the minds of the contracting parties, and as there was no privity between the defendant and the plaintiffs relative to the leasing of the premises in question, neither subrogation took place when plaintiffs acquired the lands, the trial court did not incur an error in not fixing a period for the lease of the premises.

For our foregoing conclusions, we deem it unnecessary to discuss the last assignment of error.

WHEREFORE, the judgment appealed from, being in accordance with law and evidence, is hereby affirmed with costs against appellant.

IT IS SO ORDERED.

Hernandez and Amparo, JJ., concur.

Judgment affirmed.

[No. 24885-R. Agosto 11, 1960]

JUANA LUCZON, ET AL., demandantes y apelados, *contra*
MARIANO SOLIVEN, demandado y apelante.

1. CONTRATOS; VENTA DE INMUEBLES; REGISTRO.—Es inmaterial que un documento de venta no sea notariado porque, una vez establecidos sus autenticidad y debido otorgamiento, transfiere el dominio del terreno vendido del mismo modo que lo haría un documento notariado, sobretodo cuando hay prueba de que a su otorgamiento siguieron el pago del precio estipulado y la posesión por los compradores del fundo venido. Y mientras es cierto que, cuando un documento no se ha inscrito en el Registro de la Propiedad, dicho documento no liga el terreno, opera, sin embargo, como contrato eficaz entre las partes contratantes y como prueba evidente de la autoridad del registrador de títulos para registrarlo (artículo 50, Ley Núm. 496). Bajo tales circunstancias, el juzgado tiene jurisdicción para ordenar la cancelación del certificado de título correspondiente y la expedición de otro a favor de los compradores (art. 112, Ley Núm. 496).
2. ID.; ID.; NÚMERO DE TESTIGOS.—Dos testigos bastan para el otorgamiento de un documento que no sea un testamento y no hay ley alguna que requiere que en caso de venta de un inmueble, uno de los herederos de los vendedores debe actuar como testigo de la escritura de traspaso.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Ilocos Sur. Bautista, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Vicente Llanes, en representación del demandado y apelante.

Felix V. Vergara, en representación de los demandantes y apelados.

CABAHUG, M.:

Trátase aquí de la apelación interpuesta por el demandado contra la sentencia dictada por el Juzgado de Primera Instancia de Ilocos Sur declarando a los demandantes dueños absolutos de la parcela de terreno descrita en el párrafo 2 de la demanda, y ordenando a dicho demandado a restaurar a los demandantes en la posesión de la propiedad litigada y a pagarles la suma de ₱36.25 anuales, con intereses legales desde Noviembre 4, 1948 hasta la fecha de la restauración, y las costas del juicio.

La identidad del terreno cuestionado no se discute. Ambas partes convienen en que el mismo se conoce actualmente como lote 9722 del catastro de Magsingal debidamente registrado como parcela 1 a nombre de los esposos Agustin Luczon y Victorina Usquiza bajo el Certificado Original de Título Núm. 11892 del Registro de la Propiedad de Ilocos Sur (exh. D). Tampoco se controvierte que los cónyuges citados ya han fallecido, dejando como herederos suyos a sus hijos Ramón, Pascual,

Cesarea, Rosario, Paula, Vicenta, Valeriana y Guillermo, todos apellidados Luczon; y que Ramón murió el año 1946, dejando para heredarle a los demandantes-apelados, su viuda Juana Luczon y sus hijos Gerardo, Mónica y Tomasa, apellidados Luczon.

Sin embargo, mientras los demandantes-apelados establecieron que el 16 de Agosto de 1935 los propietarios inscritos vendieron, por el precio de ₡1,030.00, a los esposos Ramón Luczon y Juana Luczon el lote cuestionado, juntamente con otros dos lotes (exh. A); que inmediatamente después de la compra, los compradores se posesionaron de las propiedades compradas y Ramón Luczon cultivó el lote 9722 por cuatro o cinco años hasta que, con motivo de su enfermedad, hizo que le sucediera en el cultivo el aparcerero Martín Duldulao quien, después de dos años, fué también substituido por otro aparcerero llamado Liborio Ollero; que del producto de azucar y maiz cuyo valor asciende anualmente a ₡145.00, Ramón Luczon primero, y luego sus herederos, recibían $\frac{1}{4}$ parte, o sea ₡36.25; y que el mes de Septiembre de 1948, Ollero fué lanzado del mencionado lote por el demandado-apelante, éste también probó que el 6 de Septiembre de 1948 Rosario Luczon, Valeriana Luczon y Pascual Luczon otorgaron un poder especial a su hermano Guillermo Luzcon, autorizando a éste a vender, en su nombre y representación, sus $\frac{3}{4}$ partes de los terrenos relictos por sus difuntos padres Agustín Luczon y Victoriana Usquiza, incluyendo los lotes 9722 y 9861 descritos en el Certificado Original de Título Núm. 11892 (exh. 3); que en uso de su poder especial, al apoderado vendió, el 15 de Septiembre de 1948 y por el precio de ₡250.00, su participación de $\frac{1}{4}$ parte en el lote 9722 y la de $\frac{3}{4}$ partes de sus poderdantes, al demandado-apelante (exh. 2); y que la alegada venta hecha por los primitivos dueños inscritos del lote controvertido por medio del exhibito A al difunto Ramón Luczon y a su viuda, la demandante-apelada Juana Luczon, es ficticia y falsa.

En vista del convenio de las partes litigantes acerca del origen e identidad del terreno controvertido, y considerando las pruebas introducidas por dichas partes, es indudable que la principal cuestión que se suscita en esta apelación gira alrededor de la autenticidad y debido otorgamiento del documento de venta exhibito A, cuya traducción al inglés aparece en el record como exhibito A-1. Si este documento es genuino, es obvio que el poder especial en cuanto afecta al lote 9722 y la escritura vendiendo al apelante $\frac{3}{4}$ partes de dicho lote son inválidos e ineficaces; porque una vez vendido el mencionado lote por sus propietarios inscritos a los apelados, ya nada del mismo habían heredado los otorgantes de los exhibitos 3 y 2 y, por consiguiente, nada podían vender al apelante.

El exhibito A es un documento privado redactado en dialecto ilocano. Es verdad que los testigos instrumentales no declararon durante la vista para establecer que el mismo se firmó en su presencia por Agustín Luczon y marcó por Victorina Usquiza; pero la apelada Juana Luczon testificó de un modo directo y positivo que el referido documento, en que ella y su finado esposo, Ramón Luczon, aparecen como compradores, se preparó en su presencia y en la misma casa levantada en el solar residencial incluido en la venta, por Antonio Parinas y luego se firmó y marcó por los otorgantes Agustín Luczon y Victorina Usquiza y testigos instrumentales Simón Parinas y Baldomero Penó; y que todas estas personas ya habían fallecido al celebrarse la vista de esta causa. Ningún testigo del apelado contradijo este testimonio de Juana Luczon que suficientemente establece la autenticidad y debido otorgamiento del exhibito A. Por ende, no habiendo nosotros tenido la oportunidad que tuvo el honorable juez sentenciador de observar la conducta de la mencionada testigo en el banquillo testifical, no tenemos base legal para revisar la opinión de dicho juez sobre su credibilidad, en ausencia de alguna circunstancia de peso que se descuidó en la formación de dicha opinión; pues bien sabido es que el mero hecho de ser uno parte litigante no le descualifica para declarar como testigo a su favor, ni se hace su declaración increíble sólo porque es un actor en el litigio.

El apelante trató de probar el alegado carácter de falso y ficticio del exhibito A no por medio de pruebas directas sino sólo mediante meras deducciones que todas son, a nuestro juicio, infundadas. Es inmaterial que el referido exhibito no sea notarial, porque una vez establecidos sus autenticidad y debido otorgamiento transfiere el dominio del terreno vendido del mismo modo que lo haría un documento notariado, sobre todo en el caso presente en que, según pruebas obrantes en autos, a su otorgamiento siguieron el pago del precio estipulado y la posesión por los compradores del fundo vendido. Y mientras es cierto que, por no haberse inscrito en el Registro de la Propiedad de Ilocos Sur, el tantas veces mencionado exhibito A legalmente no liga el lote 9722, opera, sin embargo, como contrato eficaz entre los vendedores y compradores y como prueba evidente de la autoridad del registrador de títulos para registrarlo (artículo 50, Ley Núm. 496). Y como los apelados, en su capacidad de herederos del comprador Ramón Luczon, tenían en su poder el certificado de título exhibito D, el juzgado tiene jurisdicción para ordenar su cancelación en cuanto concierne al lote 9722 y la expedición de un certificado de transferencia de título a nombre de dichos apelados (art. 112, Ley Núm. 496).

El número del certificado original de título que cubre el lote 9722 no podía ponerse en el documento de venta disputado, porque éste se otorgó el 16 de Agosto de 1935 y el aludido título se expidió el 19 de Febrero de 1937; de tal manera que en la fecha del otorgamiento de la escritura de venta aún no se sabía que el título tuviera o llevaría el número 11892.

Que en el documento de venta a favor del apelado del lote 9861 otorgado el 29 de Junio de 1935 los vendedores Agustín Luczon y Victorina Usquiza se limitaron a signarlo "por no saber escribir" (exhíbitos 1 y 1-a), no autoriza, como conclusión lógica e inevitable, que Agustín no sabía firmar ni podía haber firmado el exhibito A el 16 de Agosto del mismo año. Es de conocimiento general que no solamente de entre los labriegos sino que hasta de entre las personas que ocupaban cargos municipales en los comienzos de la soberanía americana había muchos individuos que, sin saber escribir sabían, no obstante, firmar o garrabatear sus nombres—como claramente se ve que así lo hizo Agustín Luczon en el documento exhibito A. Ni autoriza semejante conclusión la circunstancia de que habiendo sólo signado el exhibito 1, Agustín no podía haber firmado el exhibito A 48 días después; porque como Agustín Luczon era un analfabeto, es posible que en 29 de Junio de 1935 padecía de cierta dolencia o estado de nerviosidad que no sentía el 16 de Agosto del citado año y que le imposibilitó arrojar en el exhibito 1 su firma que, lejos de ser "hermosa", es, incuestionablemente, de un ileterato—como se demuestra palpablemente por la indecisión y discontinuación de los rasgos de las letras que aparecen separadas unas de otras.

La alegada diferencia de la marca digital de Victorina Usquiza en los exhibitos A y 1 no está justificada por prueba alguna. Con la ayuda de una lente de ampliación, hemos examinado detenidamente ambas marcas y estamos convencidos de que las mismas son de una misma persona. Los arcos simples de las arrugas, las deltas o bifurcaciones de las mismas y los remolinos centrales son idénticos y similares en ambas marcas.

Nada de extraño hay que Antonino Parinas que redactó y escribió el exhibito A no lo haya firmado como testigo. Habiéndolo hecho Simón Parinas y Baldomero Pino, la firma de Antonino estaba de sobra. Por la misma razón, tampoco de extraño y anómalo hay de que ninguno de los herederos de los vendedores haya firmado como testigo del repetidas veces aludido documento. Dos testigos bastan para el otorgamiento de un documento que no sea un testamento y no hay ley alguna que requiere que en caso de venta de un inmueble, uno de los herederos de los ven-

dedores debe actuar como testigo de la escritura de traspaso.

Que el exhibito A es ficticio porque como los esposos Agustín Luczon y Victorina Usquiza eran labriegos no necesitaban vender propiedad alguna para comprar medicina, pues los labriegos no se curan con medicinas, es otra ilación evidentemente ilógica que, en verdad, no necesita de comentario alguno. Las supuestas contradicciones apuntadas por el apelante sobre el mes—si era Septiembre o Diciembre—en que se verificó la detentación del lote cuestionado, es de poca monta que de ningún modo puede alterar el hecho material debidamente establecido de que el apelante lanzó del mismo al aparcerero Ollero (de los apelados) después de que dicho apelante compró el referido lote de Guillermo Luczon y de los poderdantes de éste. Y los errores supuestamente cometidos por el juzgado inferior en el *ratio decidendi* de la decisión apelada, son inmatrimoniales. Se refieren a la Causa Civil No. 621 sobre el lote 5108 cuya porción se detentó por Guillermo Luczon quien después la abandonó, motivo por el cual dicha causa se sobreseyó.

En resumen, somos de opinión y concluimos, en vista de las consideraciones arriba expuestas, que el documento de venta exhibito A es genuino, válido y eficaz, habiendo traspasado a los compradores Ramón Luczon y Juana Luczon todo derecho, título e interés que tenían los esposos Agustín Luczon y Victorina Usquiza en el lote 9722 del catastro de Magsingal descrito como parcela 1 del Certificado Original de Título Núm. 11892 de la Oficina del Registro de la Propiedad de Ilocos Sur. Por tanto, no erró el juzgado *a quo* al declarar a los herederos de Ramón Luczon, los actuales apelados, dueños absolutos de dicho lote y condenar al apelante a restituirles en la posesión del mismo, y al condenar al ultimo a pagar a aquéllos la cantidad de ₱36.50 en concepto de daños y perjuicios desde la presentación de la demanda hasta la entrega de la posesión ordenada, más sus intereses legales y las costas procesales.

EN MERITOS DE TODO LO EXPUESTO, se confirma la sentencia apelada y se ordena al Ríregistrador de Títulos de Ilocos Sur que concele el Certificado Original de Título Núm. 11892 en cuanto afecta al lote 9722 y, en su lugar, expida un certificado de transferencia de título a favor de los apelados en su capacidad de herederos de Ramón Luczon. El apelante pagará las costas de esta instancia.

ASI SE ORDENA.

Dizon y Makalintal, MM., están conformes.

Se confirma la sentencia.

[No. 27491-R. August 18, 1960]

UNIVERSITY PUBLISHING COMPANY, INC., petitioner, *vs.* HON. NICASIO YATCO, Judge of the Court of First Instance of Quezon City, and FRANCISCA B. VDA. DE CASTILLO, ET AL., respondents.

1. PLEADING AND PRACTICE; BILL OF PARTICULARS; BILL OF DISCOVERY.—The principal functions of a bill of particulars, under our old procedural practice, were to enable a party to prepare his defense and to clarify issues and aid the court in an orderly and expeditious disposition of a case. Under the new rules, these functions are, in general, the same except that in view of the availability of such processes as discovery thru interrogatories, depositions and production of documents, the functions of a bill of particulars could hardly be needed to enable the party to prepare his case for trial. Thus, a bill of particulars may not be obtained after the issue is joined but either party may obtain further information by discovery (*Fried vs. Warner Bros, Circuit Management Corp.* [D.C. Pa.] 26 F. Supp. 603; *Marin vs. Knopf*, 4 Federal Rules Service 174; cited in *Francisco's Trial Technique and Practice Court*, Vol. 1, 3rd Ed., p. 158).
2. ID.; ID.; ALLOWANCE; COURT'S DISTRETION.—The granting of a motion for a bill of particulars after issue is joined is not absolute. Such a motion is addressed to the sound discretion of the court (*United States vs. Association of American Railroads*, 5 F.R.D., 510), and its allowance is not a matter of right and should not be ordered in the absence of a showing that otherwise the moving party is unable to plead. But a motion for bill of particulars should not be denied on the allegation that the preparation of the bill of particulars would be difficult and would entail delay, tedious inquiry, effort and expenses, where it is justified by the circumstances of the case, or because the inquiries are multiple in form, if they are clear and understandable (*Teller vs. Montgomery Ward & Co.*, 27 F. Supp. 938).
3. ID.; COUNTERCLAIM; KINDS.—Counterclaims are of two kinds—the so-called *compulsory counterclaim*—which arises out of or is necessarily connected with the transaction or occurrence, that is, a subject matter of the opposing party's claim; and the so-called *permissive counterclaim*—which does not arise or is not necessarily connected with the transaction or occurrence, that is, the subject matter of the opposing party's claim. The failure of the corresponding party to interpose such permissive counterclaim will not produce any legal effect against it because this counterclaim—which might have matured or was acquired by a party serving his pleading or answer—with the court's permission may be presented as a counterclaim by means of a supplemental pleading, before judgment.
4. ID.; AMENDMENT OF PLEADINGS; LIBERALITY OF RULES.—A petition for leave to amend may properly be granted at any stage of the action, provided it is not after the rendition of the final judgment (*Espiritu vs. Crossfield*, 14 Phil. 588-91; Section 2, Rule 17, Rules of Court). And where by allowing an amendment, even with a petition for a bill of particulars, no new situation which might change the entire set-up of a case and thus prejudice the adverse party is obtaining, such amendment should be granted (*Alonso vs. Villamor*, 16 Phil., 315) because "amendments to pleadings are favored and should

be liberally allowed in the furtherance of justice. This liberality is greatest in the early stages of a law suit, decreases as it progresses, and changes, at times, to a strictness, amounting to prohibition" (Section 2 (e), Rule 17, Rules of Court).

ORIGINAL ACTION in the Court of Appeals. Certiorari with preliminary injunction.

The facts are stated in the opinion of the Court.

Aruego, Benitez & Mamaril, for petitioner.

Pablo L. Meer and Jose M. Luison, for respondents.

PICCIO, J.:

On December 22, 1959, respondents Francisca B. Vda. de Castillo, et al., filed a complaint against the petitioner (then defendant) before the Court of First Instance of Quezon City (Civil Case No. Q-4884) for a sum of money, damages, accounting and cancellation of contract, under six causes of action—for alleged royalties and commission due the publication of a book written by Francisca B. Vda. de Castillo's husband (since deceased); the cancellation of the contract involved therein and transfer to their names of the copyright of the books in question; for recovery of actual and moral damages, expenses and attorney's fees.

Summoned, petitioner-defendant filed a motion for a bill of particulars with respect to the first two causes of action and an answer to the 3rd, 4th and 5th causes of action. The basis for the petition for a bill of particulars appears as follows: There was a supposed agreement for the then defendant to pay plaintiffs' predecessor-in-interest a royalty of 30% of the net selling price of every published copy of the book, plus a commission of 30% for the copies of the book sold directly by plaintiffs' predecessors-in-interest to the local government.

It thus appears that plaintiffs were then seeking the collection of the sum of ₱3,816.00 and ₱3,360.00 representing the balance of unpaid royalties and commission, respectively. Defendant Publishing Company (petitioner herein) then contended that before it could plead properly to the claims, said defendant need to be apprised on such particular items as "the number of copies of the books sold by said defendant and the number of copies sold by plaintiffs' predecessor-in-interest himself directly to the local government", so as to determine the resultant commission—without which particulars, the allegations of the cause or causes of action in the complaint were vague and indefinite.

As aforesaid, petitioner-defendant had answered the other causes of action, with specific denial of certain allegations therein.

The then plaintiffs filed an opposition to this motion for a bill of particulars on the alleged ground that an answer (Annex D) had already been filed.

On January 30, 1960, respondent Honorable Judge Nicasio Yatco issued an order denying the motion for a bill of particulars on the aforementioned stated ground that an answer (Annex D) had already been filed by defendant.

In view of this denial of the motion for a bill of particulars, petitioner-defendant, on March 12, 1960, filed a motion for leave of court to admit an amended answer wherein he made it appear that defendant had reserved its right (in the original answer) to file an amended answer, and include therein whatever special defenses it might interpose. The then plaintiffs Francisca B. Vda. de Castillo, et al., promptly filed an opposition (Annex F). On March 21, 1960, respondent Judge Nicasio Yatco issued an order denying the motion for leave of court to admit the amended answer, contending that the said proposed amended answer contains allegations that would entirely change the theory in the original answer already filed—"which change could not be effected by an amendment".

A motion for reconsideration of this court's order having been denied by the respondent court after due hearing, the petitioner filed the instant petition praying for the issuance of a writ of preliminary injunction preventing the respondent judge and his specially appointed commissioner Atty. Jose R. Jasmin to try and hear the case on its merits, and that after due hearing, the orders of said respondent judge denying the motion for leave of court to file an amended answer dated March 21, 1960 as well as the order denying the motion for reconsideration dated May 7, 1960 be set aside, thus requiring respondent judge to admit the proposed amended answer.

There could hardly be any question about defendant Publishing Company's (petitioner herein) filing a subsequent amended answer, because said party had reserved its right to subsequently file said amended answer—to include "whatever special defenses and counterclaim it may wish to interpose", this being due probably to the limited time under its disposal to have a complete grasp of the facts of the case—and interpose its necessary defenses.

The principal functions of a bill of particulars, under our old procedural practice, were to enable the petitioning party to prepare his defense and to clarify issues and aid the court in an orderly and expeditious disposition of a case. Under the new rules, these functions are, in general, the same except that in view of the availability of such processes as discovery thru interrogatories, depositions and production of documents, the functions of a bill of parti-

culars could hardly be needed to enable the petitioning defendant to prepare his case for trial. Thus, a bill of particulars may not be obtained after the issue is joined but either party may obtain further information by discovery (*Fried vs. Warner Bros. Circuit Management Corp.* [D.C. Pa.] 26 F. Supp. 603; *Marin v. Knopf*, 4 Federal Rules Service 174; cited in *Francisco's Trial Technique and Practice Court*, Vol. 1, 3rd Ed., p. 158).

While a petition for a bill of particulars may not be obtaining after issue is joined, in the instant case, however, such issue or issues had not been completely joined when the then defendant filed its petition for a bill of particulars, for in its original answer, the said party answered the first two causes of action and filed a motion for a bill of particulars for the remaining causes of action, with a statement for a reservation to file an amended answer.

Under the American Federal Rules (*supra*) the issuance of a bill of particulars after issue is joined, is not absolute. Such a motion for a bill of particulars is addressed to the sound discretion of the court (*United States vs. Association of American Railroads*, 5 F.R.D., 510). It is not a matter of right and should not be ordered in the absence of a showing that otherwise the moving party is unable to plead. The allegation, however, that the preparation of a bill of particulars would be difficult and would entail delay, tedious inquiry, effort and expenses is no defense for a motion for a bill of particulars, if said motion is justified by the circumstances of the case. Neither would a motion for a bill of particulars be denied solely because inquiries are multiple in form, if they are clear and understandable (*Teller vs. Montgomery Ward & Co.*, 27 F. Supp. 938).

The respondents in this instant action contend that the proposed amended answer in question, if admitted, would entirely change the theory in the original answer filed by the defendant, which change could not be effected through amendment and that this change consists in the inclusion in the said proposed amended answer of a counter-claim—although, as is argued by the petitioner, the said counter-claim was pointed at by the then defendant (Petitioner herein) when it filed its original answer.

Against this contention of respondents herein, petitioner cites the case of *Ledesma v. Morales, et al.* (G.R. No. L-3251, promulgated August, 1950). In this case, the Supreme Court ruled that respondent's amended answer was in order and admitted the same. But again respondents insist that in the proposed amended answer (Annex E-1) of th petitioner, what is being sought is not only an accounting but an intended showing that the deceased Justiniano D. Castillo was indebted to the petitioner Publish-

ing Company of several thousands of pesos "due to alleged over-payment of his commission and royalties and for some copies of books taken by him". While the special defenses interposed by the petitioner in its original answer (Annex B) as then defendant consist of a mere denial because of lack of sufficient knowledge or information of the facts alleged in the complaint (Annex A) or because the allegations in said complaint were insufficient or indefinite, yet in that proposed amended answer petitioner appears to have interposed several special defenses.

A cursory examination, however, of the intended "new special defenses" would at once reveal that the same refer to or rotate within the confines of the principal agreement or contract had between respondent Francisca B. Vda. de Castillo's predecessor-in-interest and the petitioner herein.

Besides, considering the circumstance that the then defendant had hinted in its original answer the filing of a subsequent petition for an amended answer with "counter-claims" which it then wished to interpose, under existing rules, even if such counter-claims have not been specified, said counter-claims are still admissible under the circumstances. For counter-claims are of two kinds—the so called *compulsory counter-claim*—which arises out of or is necessarily connected with the transaction or occurrence, that is, a subject matter of the opposition party's claim; and the so-called *permissive counter-claim*—which does not arise or is not necessarily connected with the transaction or occurrence, that is, the subject matter of the opposing party's claim. The failure of the corresponding party to interpose such permissive counter-claim will not produce any legal effect against it because this counter-claim—which might have matured or was acquired by a party after serving his pleading or answer—with the court's permission may be presented as a counter-claim by means of a supplemental pleading, before judgment. And when a party failed to set up a counter-claim because of oversight, inadvertence or excusable neglect, or when justice so requires, said party may, with the court's permission, set up a counter-claim by simply amending his pleading before judgment (again quoting Francisco's Trial Technique and Practice Court, Vol. 1, 3rd Ed., pp. 183-184).

"Leave of court required.—Under sections 4 and 5, leave of court is required to set up counterclaims or cross-claims arising after answer, or omitted counterclaims or cross-claims. The rule is very liberal in this respect, especially with respect to compulsory counterclaims. The grounds or reasons for which leave of court may be granted include not only oversight, inadvertence and excusable neglect, but also the very broad ground that justice requires the amendment. Courts should therefore be liberal in the admission, especially of compulsory counterclaims which may be barred

unless interposed. And where a petition for leave to file a supplemental or amended pleading is unjustifiably refused by the trial court, the remedy of certiorari will lie to set aside the order of denial on the ground of abuse of discretion". (Mejia, Civil Practice and Procedure, 1958, citing Jover Ledesma *vs.* Morales and Amparo, 47 O.G. [Supp. 12] 382.)

And yet, the petitioner herein could not be singled out as having failed to file said counter-claims because of oversight, etc., inasmuch as he had made a reservation to possibly file them subsequently—evidently because of lack of time to enable him to have a complete grasp of the facts and the attendant circumstances of the case.

We are not, therefore, prepared to agree with the trend of respondents' reasoning that the admission of the proposed amended answer with its counter-claims would entirely change petitioner's theory of the case, because, as has been previously stated, it did not only hint on the subsequent filing of the said amended answer with counter-claims, but at the same time pointed particularly at the nature of the said counter-claims in filing its original answer. Its proposed amended answer would, at most, simply implement or complement the position or positions it had taken in its original answer, with a reservation, and "did not substantially change the cause of action or defense, nor alter the theory of the case". (Mejia, *supra*, p. 425, citing Torres *vs.* Tomacruz, 49 Phil. 913; See also Bascos *vs.* Court of Appeals, et al., G.R. No. L-8400, January 30, 1954 and Monte *vs.* Moya, et al., G.R. No. L-10754, April 23, 1957.)

It may be admitted in all candor that respondents are not without powerful arguments and reasons in taking their position, that is, in denying petitioner's amended answer with its counter-claims. The trend, however, of procedural rules seem to veer toward a more liberal interpretation of its requirements so as to avoid a party being denied its day in court and without being accorded the full measure of opportunity to be heard in its claims or protestations. Perhaps it would be to the glory of our administration of justice if we have accorded more elasticity and flexibility in the interpretation of our procedural laws—if we were to pass upon once and for all the issue or issues that might be provoked in one single action, and thus accelerate speed with which we are supposed to dispose of cases in court. For what would it matter parties-litigants, for the court to issue a verdict for either party without a subsequent proceeding when such verdict would not be affected, after all, by an amendment having been admitted after, instead of before trial.

For it is a matter of common knowledge that, to a great extent, the joint labor of both the bar and the court is spent upon hair-splitting distinctions in the form, rather

than the import of pleadings, and that a party who had mistaken his form of action sometimes lost his case because of that mistake alone, while the merits of the case are forgotten and are never passed upon—thus denying substance from bossing over form.

A petition for leave to amend may properly be granted at any stage of the action, provided it is not after the rendition of the final judgment (*Espiritu v. Crossfield*, 14 Phil. 588-91; Sec. 2, Rule 17, Rules of Court). And where by allowing an amendment, even with a petition for a bill of particulars, no new situation which might change the entire set up of a case and thus prejudice the adverse party is obtaining, such amendment should be granted (*Alonso vs. Villamor*, 16 Phil. 315) because “amendments to pleadings are favored and should be liberally allowed in the furtherance of justice. This liberality is the greatest in the early stages of a law suit, decreases as it progresses, and changes, at times, to a strictness, amounting to a prohibition” (Section 2(e), Rule 17, Rules of Court). And it is self-evident that this proposed change in petitioner’s pleading was invoked during the early stages of the action.

The remedy prayed for is hereby granted; the aforementioned order of the Honorable respondent judge denying the motion for leave to file an amended answer, dated March 21, 1960 as well as the order denying the motion for reconsideration dated May 7, 1960 is set aside, with orders for the respondent court to admit petitioner’s amended answer.

The writ of preliminary injunction against respondent court as well as the commissioner, Atty. Jose R. Jasmin, from trying the case is hereby made permanent, with the costs against respondents Francisca B. Vda. de Castillo, et al.

Martinez and Narvasa, JJ., concur.

Petition granted.